ASYLUM ABUSE: IS IT OVERWHELMING OUR BORDERS?

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

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ASYLUM ABUSE: IS IT OVERWHELMING OUR BORDERS?

THURSDAY, DECEMBER 12, 2013

HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
Washington, DC.

The Committee met, pursuant to call, at 10:16 a.m., in room 2141, Rayburn House Office Building, the Honorable Bob Goodlatte (Chairman of the Committee) presiding.

Present: Representatives Goodlatte, Sensenbrenner, Coble, Smith of Texas, Chabot, Forbes, King, Franks, Gohmert, Jordan, Poe, Chaffetz, Marino, Gowdy, Labrador, Farenthold, Collins, DeSantis, Conyers, Scott, Lofgren, Jackson Lee, Johnson, Chu, Deutch, Gutierrez, and Garcia.

Staff Present: (Majority) Shelley Husband, Chief of Staff & General Counsel; Branden Ritchie, Deputy Chief of Staff & Chief Counsel; Allison Halataei, Parliamentarian & General Counsel; Dimple Shah, Counsel; Kelsey Deterding, Clerk; (Minority) Perry Apelbaum, Staff Director & Chief Counsel; Danielle Brown, Parliamentarian; and Tom Jawetz, Counsel.

Mr. GOODLATTE. Good morning. The Judiciary Committee will come to order. And without objection, the Chair is authorized to declare recesses of the Committee at any time.

I will begin with my opening statement. The United States of America is extremely hospitable to immigrants, asylees, and refugees. Our Nation's record of generosity and compassion to people in need of protection from war, anarchy, natural disaster, and persecution is exemplary and easily the best in the world.

We have maintained a robust refugee resettlement system, taking in more United Nations designated refugees than all other countries combined. We grant asylum to tens of thousands of asylum seekers each year. We expect to continue this track record in protecting those who arrive here in order to escape persecution.

Unfortunately, however, because of our well-justified reputation for compassion, many people are tempted to file fraudulent claims just so they can get a free pass into the United States. The system becomes subject to abuse and fraud when the generous policies we have established are stretched beyond imagination by the Administration.

It also becomes subject to abuse when people seek to take advantage of our generosity and game the system by identifying and exploiting loopholes. Unfortunately, some advocacy groups have un-

dertaken a strategy of staging public violations of immigration laws in a brazen attempt to politicize the issue of immigration reform.

They somehow seem to believe that this is productive. It is just the opposite. In one example, the so-called Dream 9 and Dream 30 voluntarily crossed the border and returned to their home countries with orders of deportation. Just days later, pursuant to their plan, they were apprehended by Border Patrol and claimed that they had a credible fear of returning to the very country to which they just intentionally self-deported.

Political stunts like these demonstrate the ineffectiveness of the asylum process and damage credible claimants. Unlawful or inadmissible aliens caught along the border or at ports of entry can claim a credible fear of persecution in order to seek a hearing before an immigration judge.

Over the past several years, credible fear claims have been granted at ever-growing rates. Currently, data provided by the Department of Homeland Security shows that USCIS makes positive credible fear findings in 92 percent of all cases decided on the merits. Not surprisingly, credible fear claims have increased 586 percent from 2007 to 2013, as word has gotten out as to the virtual rubberstamping of applications.

Not only is the rise in credible fear claims concerning, the Administration is contributing to undermining our asylum system by failing to follow current law as it pertains to the asylum process. Pursuant to the Immigration and Nationality Act, arriving aliens are subject to mandatory detention, whether they are found to have credible fear or not, until it is determined whether they have legitimate asylum claims.

This crucial requirement is designed to prevent aliens from being released into our communities and then disappearing into the shadows. The detention standard was enacted precisely because large numbers of arriving aliens were absconding after claiming asylum and being released.

Under the statute and corresponding regulations, under limited circumstances, parole from detention is available to meet a medical emergency or if it is a necessary for a legitimate law enforcement objective. However, these standards have been watered down by the current Administration via executive fiat. A December 8, 2009, policy directive issued by former ICE Director Morton provides that any arriving alien who has been found to have a credible fear and can establish identity and argue that they are not a flight risk or a danger to the community should be released by ICE.

This is inconsistent with the statute that requires detention except in very limited circumstances. And not surprisingly, the timing of this memo appears to correlate with the uptick of credible fear claims in recent years.

As a result of these lax detention standards and ease of being found to have a credible fear, claims have increased dramatically in recent years. The stellar efforts of our Border Patrol agents are in vain if the aliens they apprehend are simply released into our communities. Once released, many of these aliens, particularly those with meager or invented claims of asylum, simply melt into the population.

Critics allege that the purpose is not to obtain asylum, but rather to game the system by getting a free pass into the United States and a court date for which they do not plan to show up. Accounts indicate that aliens being coached in the asylum process and that aliens are being taught to use certain terms to ensure that they have—that they are found to have a credible fear. According to critics, many of these claims are often an orchestrated sham.

In addition to this alarming trend, the House Judiciary Committee recently obtained an internal CBP memo that states many people claiming a credible fear of persecution at our ports of entry have a direct or indirect association with drug trafficking and other illegal activity, such as human smuggling. Since there are intelligence gaps and loopholes in the system, the asylum process is often being abused by individuals who would otherwise be subjects of interest or subjects of criminal investigations.

Once these unscrupulous individuals falsely claim a credible fear of persecution, there is virtually no investigation by U.S. authorities. Because the Obama administration refuses to detain most of them, criminals and those who pose national security threats are then able to live and work in the U.S. for many years before their cases are ever heard by immigration judges.

Ultimately, the Administration is demonstrating its inability and lack of desire to enforce the law. The threat of infiltration by criminal elements and cartels is putting the American public at risk. These decisions are neither prudent nor wise. To make matters worse, they undermine the confidence in a secure border necessary to develop a common sense, step-by-step approach to improving our immigration laws.

I look forward to getting to the bottom of this disturbing problem today, and it is now my pleasure to recognize the Ranking Member of the Immigration and Claims Border Security Subcommittee, the gentlewoman from California, Ms. Lofgren, for her opening statement.

Ms. LOFGREN. Thank you, Mr. Chairman.

Five years ago, I became part of an increasingly rare process in the House of Representatives. A large bipartisan group of lawmakers met once or twice a week, sometimes more often, to try and devise a plan to fix our broken immigration system. And although the process went on hiatus for much of the last Congress, we renewed our efforts last fall and worked hard until just a few months ago when several Republicans in the group, for whom I have a great deal of respect, announced their departure from the group.

That process may not have borne fruit, not yet at least, but at least it was something. I am afraid that when it comes to immigration, the work this Committee has done over the past year has not moved the ball forward. Hope springs eternal, however. And when I return for the next session in January, I will come ready to work.

But back to today's topic. Before I address the question put to us by the title of this hearing, I think it is important to review how our current expedited removal and credible fear processes came about and what they are.

In 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act. I voted against the bill in committee. I voted against it on the floor, and I voted against it when it came

out of conference. I believed then, as now, that the bill was a mean-spirited bill that would do drastic damage to immigrants and our immigration system.

And one of the most pernicious aspects of that law was the creation of expedited removal, which allows people apprehended at our ports, along the borders, and in some cases, in the interior, to be deported with little due process.

As Congress recognized at that time, expedited removal posed the real danger that bona fide asylum seekers would be summarily removed from the country to face persecution and torture abroad. In an effort to prevent that unacceptable outcome, the law required that every person subject to expedited removal be screened to determine whether they expressed a fear of returning to their home country.

If so, the law required that except in very limited circumstances, they be detained until a trained asylum officer could interview them and determine whether or not they possessed a credible fear of persecution. We defined "credible fear" at that time to mean that there is a "significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum."

This is a lower standard than the "well-founded" fear standard that applies to a final decision on the merits of an asylum claim, and that was our intention. We understood that it can be nearly impossible to demonstrate a well-founded fear of persecution just days after arriving in the country, and setting the bar too high would lead to unconscionable results.

After the bill became law, we heard a wave of complaints regarding the effect that expedited removal was having on asylum seekers. And just 2 years later, Congress enacted the International Religious Freedom Act of 1998, and we established the U.S. Commission on International Religious Freedom, an independent body whose commissioners are appointed by the President and congressional leadership of both parties.

In that very first authorizing statute, Congress asked the Commission to study the impact of expedited removal on people fleeing persecution. The Commission issued its study in 2005 and concluded that because of expedited removal "and its serious flaws, the United States' tradition of protecting asylum seekers—not to mention those asylum seekers' lives—continues to be at risk."

One of the most striking findings had to do with ICE's practice of paroling people out of detention. Policy guidance clearly authorized parole after an applicant had demonstrated a credible fear, had also established his or her identity, had also showed that he or she posed neither a flight risk nor a danger to the community.

But while one ICE field office paroled 97.7 percent of applicants, another paroled just 0.5 percent. So it was recommended by the Commission that the issuance of regulations be undertaken to promote consistency.

Now I want to turn to the question of today's hearing, "Asylum Abuse: Is it Overwhelming our Borders?" Let us analyze that.

First, are our borders overwhelmed? By historical measures, the answer is clearly no. Although we have seen an increase in at-

tempted border crossings along our Southwest border over the past 2 years, this is an increase from what appears to be a 40-year low just 2 years ago.

And given the increases we have made in manpower and infrastructure at the border, there is no way to argue that they are more overwhelmed today than they have been for much of our recent history.

Second, are some parts of our border overwhelmed? I hope to learn more about that today. But there is no question that we have seen a sharp increase in people expressing the fear of being returned to their home countries. There were 5,369 claims of credible fear in fiscal year 2009; more than double that number, 13,880, in fiscal year 2012; and nearly triple that number, 36,035, in this past fiscal year.

Still, to keep things in perspective, only a small fraction of the people apprehended at and between our ports express such fear, and the overwhelming majority of people subject to expedited removal are removed from the country in a short period of time.

So the final part of the question is whether the recent increase is a result of asylum abuse? And the truth is we don't know yet. We can't yet know. The cases that are driving the increase in fiscal year 2013 have largely not yet been adjudicated by the immigration courts.

As this Committee has documented time and time again, the case backlog in our courts, caused primarily by inadequate investment in new judges, support personnel, and facilities, is preventing cases from being resolved in an acceptable timeframe. We do know a few things, however.

The increase in credible fear claims is being driven by people from Central America. Sixty-five percent of the claims in fiscal year 2013 came from Guatemala, Honduras, and El Salvador. Although claims by Mexicans have increased, Mexicans still make up only 7 percent of all credible fear claims.

Also, more than three-quarters of the claims are coming from people apprehended between the ports, not at the ports. Since people apprehended between the ports are not eligible for parole under the parole directive issued by ICE in 2009, this provides strong evidence that the directive itself is not drawing people to come here.

Something is, in fact, going on. The number of people claiming credible fear of persecution or torture definitely increased in the last 2 years. But whether that is the result of better fear screenings, efforts to defraud the system, or a brewing refugee crisis in the Western Hemisphere is something we still need to explore. Prejudging that question, I believe, is dangerous and unwise.

I look forward to learning from our witnesses, and I thank each of them for appearing today, and I yield back, Mr. Chairman.

Mr. GOODLATTE. The Chair thanks the gentlewoman and is now pleased to recognize the Chairman of the Subcommittee on Immigration and Border Security, Mr. Gowdy of South Carolina, for his opening statement.

Mr. GOWDY. Thank you, Mr. Chairman.

I want to thank you for your work on this issue, and I want to yield my time to my friend from Utah, Mr. Jason Chaffetz, who has

done remarkable work on this issue, both on Judiciary and Oversight and Government Reform.

Mr. Chaffetz?

Mr. CHAFFETZ. I thank the Chairman. I thank you, Mr. Gowdy and Chairman Goodlatte, for allowing this hearing to happen. This is a problem, and it is an abuse, and I am glad we are addressing it.

Today, we are going to examine the threats to our Nation's border caused by the abuse of the credible fear process. In a reflection of the Obama administration's undermining of the enforcement of our immigration laws, these credible fear claimants almost always get approved and are released into our communities.

As a result, the integrity of our immigration system is compromised, and potential threats to our communities and national security are able to legally live and work here. When their asylum claims are ultimately denied, they simply add to the fugitive population here in the United States. This is all the more troubling because we have received reports that Mexican drug cartel members are abusing the credible fear process to bypass regular immigration checks in order get into the country.

Thereafter, they expand their human and drug smuggling operations in the United States, and once here, some of these cartel members even engage in the same violent feuds that supposedly caused them to flee Mexico in the first place. DHS has confirmed some of these reports but has refused to provide us with the documentation they admit exists that details them.

According to reports, cases show that two women made claims of asylum utilizing credible fear process, and 3 months later were apprehended at the Border Patrol checkpoint with more than $1 million in cocaine. One of the women was allegedly married to a cartel boss.

Information provided by DHS also details cartel hit squad members who entered the United States after claiming they feared violence when they fell out of grace with their employers. And yet in another case two families involved in drug trafficking came to the United States, claiming credible fear of persecution, then began targeting each other once they were here. It is outrageous that dangerous criminals are gaming the system by claiming they have a credible fear of persecution when often they have been the perpetrators of violence themselves.

To make matters worse, the availability of heroin and methamphetamine in the United States is on the rise due in part to an ever-evolving entrepreneurial spirit of the Mexican drug cartels, according to a new study released by the DEA. According to this report, the amount of heroin seized at the southern U.S. border has increased 232 percent between 2008 and 2012, apparently as the result of greater Mexican heroin production and growing incursion by Mexican drug traffickers into the United States market.

Homeland security officials claim they screen everyone who makes a credible fear claim and try to identify and detain those who could be dangerous to the community. Clearly, whatever they are doing, it is ineffective. And as Chairman Goodlatte explained, it might be more effective if they adhered to the actual statute and not legislated from the executive branch.

It seems amazing to me that the Department of Homeland Security has not apparently sought to determine, one, why credible fear claims have risen from about 5,000 in 2008 to almost 36,000 in 2013 or, two, why the rate that USCIS finds aliens have established credible fear currently is at almost 92 percent. Ninety-two percent are getting a rubberstamp. They are getting the golden ticket to come to the United States of America.

What can be done administratively or statutorily to address this ongoing and escalating abuse to our system? While DHS has not yet provided insight into the causes or potential resolution of the crisis surrounding the level of credible fear applications, there are likely culprits.

The low threshold for establishing a credible fear, ICE's recent liberalization of the "mandatory detention policy for inadmissible aliens" who meet this low threshold, inadequate training for asylum officers, and institutional incentives to approve applications, something I am deeply concerned about—many of these abuses could be halted by the Administration itself.

If word got out that bogus credible fear claims were not being rubberstamped and the claimants rewarded with almost certain release into the United States and work authorization, the vast increase in claims would quickly abate.

However, if the Administration is not willing to take these steps, I am prepared to pursue necessary legislation to do the same. In the end, it doesn't matter how many aliens are apprehended along the border if apprehension itself becomes the golden ticket to the country.

When I visited Phoenix with Mr. Bentivolio and I went to the ICE office, we talked about the number of credible fear claims that were happening in the region. If you claim asylum in the Phoenix office and they assign you a court date, the court date you are going to get right now is in 2020. In the meantime, you are going to get free education, free healthcare, and you are probably going to get a work permit.

That is not right, Mr. Chairman. I am glad you are holding this hearing today. I appreciate the time, and I yield back.

Mr. GOODLATTE. The Chair thanks the gentleman and is now pleased to recognize and welcome back the Ranking Member of the Judiciary Committee, who has been on a mission to help our country pay our respects to the people of South Africa and in memory of a great international leader and fighter for freedom, Nelson Mandela.

And I will have another comment after your remarks. So I am happy to recognize the gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman.

And we have a couple of our other Members that were on that memorial trip with me, and we are very happy to be back and with the Committee.

Now last month, I observed that the very first hearing this Committee held in the 113th Congress was the need for immigration reform. It made sense. One day after the election, the Speaker of the House, Mr. Boehner, called for a "comprehensive approach" to immigration reform, as he said it, "long overdue."

A few months later, the Republican National Committee recognized that the party "must embrace and champion comprehensive immigration reform." And I agree with both statements.

So here we are on the last full day of the first session of the 113th Congress, and so far, we have yet to see any real, decisive action in the House. Yes, we have had 14 hearings on the issue, considered 4 bills, each one less effective than the one before it, in Committee. But even in Committee, we have yet to consider critical parts to reform.

We have seen no bill for the Dreamers. We have seen no bill providing a way for the 11 million people living in our communities, working in our fields and factories, attending our churches and schools to get right with the law and earn citizenship. They are still in the shadows.

In fact, the only bill pending in the House that does these things is H.R. 15, which currently has 193 cosponsors.

Throughout the year, I have been moved by the presence of immigrant children, Dreamers, who have attended our hearings, visited our offices, and held events of their own around the country.

I have listened to faith leaders, business leaders, labor leaders explain the fierce urgency of enacting common sense immigration reform. And for the past month, just steps from where we sit today, advocates for immigration reform have abstained from all food for weeks on end in order to keep the Nation's hunger for immigration reform at the forefront of our work here in Washington.

And despite all of that, our final hearing for 2013 is yet another hearing that will leave the impression that when Republicans on this Committee think of immigrants, they think first of criminals or fraudsters or gang members.

The issue we will address today is not unimportant. We know that the number of people seeking asylum at our borders has increased over the last 2 years. In some places, the increase has been quite dramatic. It is important that we figure out why this is happening because only after we do that we can figure out how to deal with it in a responsible way.

But that is not all we have to do. Fixing our broken immigration system still lies ahead for the House. All year long, the majority has said that they want to take their time to do things right and approach immigration reform one piece at a time.

Now I agree that we should be deliberative, but let us not fool ourselves. This issue isn't new. We have been working to fix our broken system for over a decade now. The debates we are having in this Committee are debates we had going back as far as 1996, and then in 2005, and then throughout the last Congress, the 112th.

And we know that this much is true. Families, businesses, and communities all around this country are counting on us to do a lot more in 2014 than just hold another 14 hearings.

And so, I stand ready to do the work that needs to be done. Let us begin the second session by bringing up H.R. 15. And if not, let us consider some of the Republican bills that I understand may be the works. Let us just do something. Because doing nothing is no more an option for us than it is for the families that are being torn apart each and every day.

And I thank the Chairman, and I yield back any time that may be remaining.

Mr. GOODLATTE. The Chair thanks the gentleman. In fact, the Chair wants to take this opportunity on the occasion of our last hearing of this year and the first session of this Congress to thank all the Members for the hard work they have put into this Committee.

The Committee has held a total of 16 full Committee hearings, 48 Subcommittee hearings, has passed 26 bills through the Committee and 27 bills through the House. Now you may wonder how we could pass 26 through the Committee and 27 through the House. The reason for that is there are a few, a small number of bills that went directly to the floor without Committee consideration and several others that the Committee shares jurisdiction with other Committees.

But that is a record of accomplishment. And to the point raised by the gentleman from Michigan, the Committee will in the new year continue work in a very deliberative manner, but a very serious manner understanding that immigration reform is needed, and it will be a top priority.

So I would encourage the Members to take the fact that we are holding the final hearing of the year on this subject as a sign of continued work, but also as a sign that we continue to learn of new problems that need to be addressed, including, unfortunately, the leaked memo which displays that the Administration knew far more about the nature of this problem and how it relates to criminal drug enterprises and, therefore, needs to be addressed as a part of our effort to do immigration reform and cover all aspects of immigration reform, including enforcement, appropriate legal immigration reforms, and finding the appropriate legal status for those who are not here lawfully today.

So, with that, I will ask unanimous consent to enter into the record the following items: Immigration and Customs Enforcement memo, entitled Parole of Arriving Aliens Found To Have a Credible Fear of Persecution or Torture; USCIS Asylum Division data through fiscal year 2013; and a news article indicating that Border Patrol agents are being ordered to stand down when encountering drug smugglers, human smugglers, and traffickers.

Without objection, those will be made a part of the record.

[The information referred to follows:]

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture

DISTRIBUTION:	**ICE**
DIRECTIVE NO.:	**11002.1**
ISSUE DATE:	**December 8, 2009**
EFFECTIVE DATE:	**January 4, 2010**
SUPERSEDES:	**See section 3.**
FEA NUMBER:	**601-05**

1. **PURPOSE.** The purpose of this ICE policy directive is to ensure transparent, consistent, and considered ICE parole determinations for arriving aliens seeking asylum in the United States. This directive provides guidance to Detention and Removal Operations (DRO) Field Office personnel for exercising their discretion to consider the parole of arriving aliens processed under the expedited removal provisions of section 235 of the Immigration and Nationality Act (INA) who have been found to have a "credible fear" of persecution or torture by U.S. Citizenship and Immigration Services (USCIS) or an immigration judge of the Executive Office for Immigration Review. This directive establishes a quality assurance process that includes record-keeping requirements to ensure accountability and compliance with the procedures set forth herein.

1.1. This directive does not apply to aliens in DRO custody under INA § 236. This directive applies only to arriving aliens who have been found by USCIS or an immigration judge to have a credible fear of persecution or torture.

2. **AUTHORITIES/REFERENCES.**

2.1. INA §§ 208, 212(d)(5), 235(b), and 241(b)(3); 8 U.S.C. §§ 1158, 1182(d)(5), 1225(b), and 1231(b)(3); 8 C.F.R. §§ 1.1(q), 208.30(e)-(f), 212.5 and 235.3.

2.2. Department of Homeland Security Delegation Number 7030.2, "Delegation of Authority to the Assistant Secretary for the Bureau of Immigration and Custom Enforcement" (Nov. 13, 2004).

2.3. ICE Delegations of Authority to the Directors, Detention and Removal and Investigations and to Field Office Directors, Special Agents in Charge and Certain Other Officers of the Bureau of Immigration and Customs Enforcement, No. 0001 (June 6, 2003).

3. **SUPERSEDED POLICIES AND GUIDANCE.** The following ICE directive is hereby superseded:

3.1. ICE Policy Directive No. 7-1.0, "Parole of Arriving Aliens Found to Have a 'Credible Fear' of Persecution or Torture" (Nov. 6, 2007).

4. **BACKGROUND.**

4.1. Arriving aliens processed under the expedited removal provisions of INA §235(b) may pursue asylum and related forms of protection from removal if they successfully demonstrate to USCIS or an immigration judge a credible fear of persecution or torture.

4.2. Arriving aliens who establish a credible fear of persecution or torture are to be detained for further consideration of the application for asylum. INA § 235(b)(1)(B)(ii). Such aliens, however, may be paroled on a case-by-case basis for "urgent humanitarian reasons" or "significant public benefit," provided the aliens present neither a security risk nor a risk of absconding. 8 C.F.R. § 212.5(b); *see also* 8 C.F.R. § 235.3(c) (providing that aliens referred for INA § 240 removal proceedings, including those who have a credible fear of persecution or torture, may be paroled under § 212.5(b) standards).

4.3. The applicable regulations describe five categories of aliens who may meet the parole standards based on a case-by-case determination, provided they do not present a flight risk or security risk: (1) aliens who have serious medical conditions, where continued detention would not be appropriate; (2) women who have been medically certified as pregnant; (3) certain juveniles; (4) aliens who will be witnesses in proceedings being, or to be, conducted by judicial, administrative, or legislative bodies in the United States; and (5) aliens whose continued detention is not in the public interest. *See* 8 C.F.R. § 212.5(b). *But compare* 8 C.F.R. § 235.3(b)(4)(ii) (stating that arriving aliens who have not been determined to have a credible fear will not be paroled unless parole is necessary in light of a "medical emergency or is necessary for a legitimate law enforcement objective").

4.4. While the first four of these categories are largely self-explanatory, the term "public interest" is open to considerable interpretation. This directive explains how the term is to be interpreted by DRO when it decides whether to parole arriving aliens determined to have a credible fear. The directive also mandates uniform record-keeping and review requirements for such decisions. Parole remains an inherently discretionary determination entrusted to the agency; this directive serves to guide the exercise of that discretion.

5. **DEFINITIONS:**

5.1. **Arriving Alien.** For purposes of this directive, "arriving alien" has the same definition as provided for in 8 C.F.R. § 1.1(q) and 1001.1(q).

5.2. **Credible Fear.** For purposes of this directive, with respect to an alien processed under the INA § 235(b) "expedited removal" provisions, "credible fear" means a finding by USCIS or an immigration judge that, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts

as are known to the interviewing USCIS officer or immigration judge, there is a significant possibility that alien could establish eligibility for asylum under INA § 208, withholding of removal under INA § 241(b)(3), or protection from removal under the Convention Against Torture.

5.3. **Parole.** For purposes of this directive, "parole" is an administrative measure used by ICE to temporarily authorize the release from immigration detention of an inadmissible arriving alien found to have a credible fear of persecution or torture, without lawfully admitting the alien. Parole does not constitute a lawful admission or a determination of admissibility, *see* INA §§ 212(d)(5)(A), 101(a)(13)(B), and reasonable conditions may be imposed on the parole, *see* 8 C.F.R. § 212.5(d). By statute, parole may be used, in the discretion of ICE and under such conditions as ICE may prescribe, only for urgent humanitarian reasons or for significant public benefit. As interpreted by regulation, "urgent humanitarian reasons" and "significant public benefit" include the five categories set forth in 8 C.F.R. § 212.5(b) and listed in paragraph 4.3 of this directive, including the general category of "aliens whose continued detention is not in the public interest."

6. **POLICY.**

6.1. As soon as practicable following a credible fear determination by USCIS for an arriving alien detained by DRO, DRO shall provide the alien with the attached *Parole Advisal and Scheduling Notification*. This form informs the alien that he or she will be interviewed for potential parole from DRO custody and notifies the alien of the date of the scheduled interview and the deadline for submitting any documentary material supporting his or her eligibility for parole. The contents of the notification shall be explained to such aliens in a language they understand. In determining whether detained arriving aliens found to have a credible fear should be paroled from custody, DRO shall proceed in accordance with the terms of this directive.

6.2. Each alien's eligibility for parole should be considered and analyzed on its own merits and based on the facts of the individual alien's case. However, when an arriving alien found to have a credible fear establishes to the satisfaction of DRO his or her identity and that he or she presents neither a flight risk nor danger to the community, DRO should, absent additional factors (as described in paragraph 8.3 of this directive), parole the alien on the basis that his or her continued detention is not in the public interest. DRO Field Offices shall uniformly document their parole decision-making processes using the attached *Record of Determination/Parole Determination Worksheet*.

6.3. Consistent with the terms of this directive, DRO shall maintain national and local statistics on parole determinations and have a quality assurance process in place to monitor parole decision-making, as provided for in sections 7 and 8 of this directive.

6.4. In conducting parole determinations for arriving aliens in custody after they are found to have a credible fear of persecution or torture, DRO shall follow the procedures set forth in section 8 of this directive.

6.5. DRO shall provide every alien subject to this directive with written notification of the parole decision, including a brief explanation of the reasons for any decision to deny parole. When DRO denies parole under this directive, it should also advise the alien that he or she may request redetermination of this decision based upon changed circumstances or additional evidence relevant to the alien's identity, security risk, or risk of absconding. DRO shall ensure reasonable access to translation or interpreter services if notification is provided to the alien in a language other than his or her native language and the alien cannot communicate effectively in that language.

6.6. Written notifications of parole decisions shall be provided to aliens subject to this directive and, if represented, their representative within seven days of the date an alien is initially interviewed for parole or the date the alien requests a parole redetermination, absent reasonable justification for delay in providing such notification.

6.7. A decision to grant or deny parole shall be prepared by a DRO officer assigned such duties within his or her respective DRO Field Office. The decision shall pass through at least one level of supervisory review, and concurrence must be finally approved by the Field Office Director (FOD), Deputy FOD (DFOD), or Assistant FOD (AFOD), where authorized by the FOD.

7. **RESPONSIBILITIES.**

7.1. The **DRO Director** is responsible for the overall management of the parole decision-making process for arriving aliens in DRO custody following determinations that they have a credible fear of persecution or torture.

7.2. The **DRO Assistant Director for Operations** is responsible for:

1) Ensuring considered, consistent DRO parole decision-making and recordkeeping nationwide in cases of arriving aliens found to have a credible fear;

2) Overseeing monthly tracking of parole statistics by all DRO Field Offices for such cases; and

3) Overseeing an effective national quality assurance program that monitors the Field Offices to ensure compliance with this directive.

7.3. **DRO Field Office Directors** are responsible for:

1) Implementing this policy and quality assurance processes;

2) Maintaining a log of parole adjudications for credible fear cases within their respective geographic areas of responsibility, including copies of the *Record of Determination/Parole Determination Worksheet*;

3) Providing monthly statistical reports on parole decisions for arriving aliens found to have a credible fear;

4) Making the final decision to grant or deny parole for arriving aliens found to have a credible fear within their respective areas of responsibility or, alternatively, delegating such responsibility to their DFODs or AFODs (in which case, FODs nevertheless retain overall responsibility for their office's compliance with this directive regardless of delegating signatory responsibility to DFODs or AFODs); and

5) Ensuring that DRO field personnel within their respective areas of responsibility who will be assigned to make parole determinations are familiar with this directive and corresponding legal authorities.

7.4. **DRO Deputy Field Office Directors** are responsible for reviewing, and forwarding for their respective FODs' approval, parole decisions prepared by their subordinates in the cases of arriving aliens found to have a credible fear of persecution or torture. Alternatively, DFODs delegated responsibility under paragraph 7.3 of this directive are responsible for discharging final decision-making authority over parole determinations in such cases within their respective areas of responsibility.

7.5. **Assistant Field Office Directors** are responsible for reviewing, and forwarding for their respective DFODs' or FODs' approval, parole decisions prepared by their subordinates in the cases of arriving aliens found to have a credible fear of persecution or torture. Alternatively, AFODs delegated responsibility under paragraph 7.3 of this directive are responsible for discharging final decision-making authority over parole determinations in such cases within their respective areas of responsibility.

7.6. As applicable, **DRO field personnel** so assigned by their local chains-of-command are responsible for providing detained arriving aliens found to have a credible fear with the attached *Parole Advisal and Scheduling Notification* and for fully and accurately completing the attached *Record of Determination/Parole Determination Worksheet* in accordance with this directive and corresponding legal authorities.

8. **PROCEDURES.**

8.1. As soon as practicable following a finding that an arriving alien has a credible fear, the DRO Field Office with custody of the alien shall provide the attached *Parole Advisal and Scheduling Notification* to the alien and explain the contents of the notification to the alien in a language he or she understands, through an interpreter if

necessary. The Field Office will complete the relevant portions of the notification, indicating the time when the alien will receive an initial interview on his or her eligibility for parole and the date by which any documentary evidence the alien wishes considered should be provided, as well as instructions for how any such information should be provided.

8.2 Unless an additional reasonable period of time is necessary (e.g., due to operational exigencies or an alien's illness or request for additional time to obtain documentation), no later than seven days following a finding that an arriving alien has a credible fear, a DRO officer familiar with the requirements of this directive and corresponding legal authorities must conduct an interview with the alien to assess his or her eligibility for parole. Within that same period, the officer must complete the *Record of Determination/Parole Determination Worksheet* and submit it for supervisory review. If the officer concludes that parole should be denied, the officer should draft a letter to this effect for the FOD's, DFOD's, or AFOD's signature to be provided to the alien or the alien's representative and forward this letter for supervisory review along with the completed *Record of Determination/Parole Determination Worksheet*. The letter must include a brief explanation of the reasons for denying parole and notify the alien that he or she may request redetermination of parole based upon changed circumstances or additional evidence relevant to the alien's identity, security risk, or risk of absconding.

8.3. An alien should be paroled under this directive if DRO determines, in accordance with paragraphs (1) through (4) below, that the alien's identity is sufficiently established, the alien poses neither a flight risk nor a danger to the community, and no additional factors weigh against release of the alien.

1) Identity.

a) Although many individuals who arrive in the United States fleeing persecution or torture may understandably lack valid identity documentation, asylum-related fraud is of genuine concern to ICE, and DRO must be satisfied that an alien is who he or she claims to be before releasing the alien from custody.

b) When considering parole requests by an arriving alien found to have a credible fear, Field Office personnel must review all relevant documentation offered by the alien, as well as any other information available about the alien, to determine whether the alien can reasonably establish his or her identity.

c) If an alien lacks valid government-issued documents that support his or her assertion of identity, Field Office personnel should ask whether the alien can obtain government-issued documentation of identity.

d) If the alien cannot reasonably provide valid government-issued evidence of identity (including because the alien reasonably does not wish to alert that government to his or her whereabouts), the alien can provide for consideration sworn affidavits from third parties. However, third-party affiants must include copies of valid, government issued photo-identification documents and fully establish their own identities and addresses.

e) If government-issued documentation of identity or third-party affidavits from reliable affiants are either not available or insufficient to establish the alien's identity on their own, Field Office personnel should explore whether the alien is otherwise able to establish his or her identity through credible statements such that there are no substantial reasons to doubt the alien's identity.

2) Flight Risk.

a) In order to be considered for release, an alien determined to have a credible fear of persecution or torture must present sufficient evidence demonstrating his or her likelihood of appearing when required.

b) Factors appropriate for consideration in determining whether an alien has made the required showing include, but are not limited to, community and family ties, employment history, manner of entry and length of residence in the United States, stability of residence in the United States, record of appearance for prior court hearings and compliance with past reporting requirements, prior immigration and criminal history, ability to post bond, property ownership, and possible relief or protection from removal available to the alien.

c) Field Office personnel shall consider whether setting a reasonable bond and/or entering the alien in an alternative-to-detention program would provide reasonable assurances that the alien will appear at all hearings and depart from the United States when required to do so.

d) Officers should exercise their discretion to determine what reasonable assurances, individually or in combination, are warranted on a case-by-case basis to mitigate flight risk. In any event, the alien must be able to provide an address where he or she will be residing and must timely advise DRO of any change of address.

3) Danger to the Community.

a) In order for an alien to be considered for parole, Field Office personnel must make a determination whether an alien found to have a credible fear poses a danger to the community or to U.S. national security.

b) Information germane to the determination includes, but is not limited to, evidence of past criminal activity in the United States or abroad, of activity contrary to U.S. national security interests, of other activity giving rise to concerns of public safety or danger to the community (including due to serious mental illness), disciplinary infractions or incident reports, and any criminal or detention history that shows that the alien has harmed or would likely harm himself or herself or others.

c) Any evidence of rehabilitation also should be weighed.

4) Additional Factors.

a) Because parole remains an inherently discretionary decision, in some cases there may be exceptional, overriding factors that should be considered in addition to the three factors discussed above. Such factors may include, but are not limited to, serious adverse foreign policy consequences that may result if the alien is released or overriding law enforcement interests.

b) Field Office personnel may consider such additional factors during the parole decision-making process.

8.4. Assigned DRO officers should, where appropriate, request that parole applicants provide any supplementary information that would aid the officers in reaching a decision. The *Record of Determination/Parole Determination Worksheet* should be annotated to document the request for supplementary information and any response from the detainee.

8.5. After preparing and signing the *Record of Determination/Parole Determination Worksheet*, and in the case of a denial of parole, drafting a written response to the alien, the assigned DRO officer shall forward these materials and the parole request documentation to his or her first-line supervisor for review and concurrence.

8.6. Upon his or her concurrence, the first-line supervisor shall sign the *Record of Determination/Parole Determination Worksheet* where indicated and forward it, along with any related documentation, to the FOD (or, where applicable, the DFOD or AFOD) for final approval.

8.7. The FOD (or, where applicable, the DFOD or AFOD) shall review the parole documentation, consult with the preparing officer and supervisor as necessary, and

either grant or deny parole by signing the *Record of Determination/Parole Determination Worksheet* where indicated and, in the case of a denial, signing the written response to the alien.

8.8. Following a final decision by the FOD to deny parole (or, where applicable, the DFOD or AFOD), the Field Office shall provide the written response to the alien or, if represented, to the alien's legal representative, indicating that parole was denied. If parole is granted, the Field Office shall provide the alien with a date-stamped I-94 Form bearing the following notation: **"Paroled under 8 C.F.R. § 212.5(b). Employment authorization not to be provided on this basis."**

8.9. If an alien makes a written request for redetermination of an earlier decision denying parole, the Field Office may, in its discretion, reinterview the alien or consider the request based solely on documentary material already provided or otherwise of record.

8.10. The supporting documents and a copy of the parole decision sent to the alien (if applicable), the completed *Record of Determination/Parole Determination Worksheet*, and any other documents related to the parole adjudication should be placed in the alien's A-file in a record of proceeding format. In addition, a copy of the *Record of Determination/Parole Determination Worksheet* shall be stored and maintained under the authority of the FOD for use in preparing monthly reports.

8.11. On a monthly basis, FODs shall submit reports to the Assistant Director for Operations, or his or her designee, detailing the number of parole adjudications conducted under this directive within their respective areas of responsibility, the results of those adjudications, and the underlying basis of each Field Office decision whether to grant or deny parole. The Assistant Director for Operations, or his or her designee, in conjunction with appropriate DRO Headquarters components, will analyze this reporting and collect individual case information to review in more detail, as warranted. In particular, this analysis will rely on random sampling of all reported cases for in-depth review and will include particular emphasis on cases where parole was not granted because of the presence of additional factors, per paragraph 8.3(4) of this directive. Any significant or recurring deficiencies identified during this monthly analysis should be explained to the affected Field Office, which will take appropriate corrective action.

8.12. At least once every six months, the Assistant Director for Operations, or his or her designee, shall prepare a thorough and objective quality assurance report, examining the rate at which paroled aliens abscond and the Field Offices' parole decision-making, including any noteworthy trends or corrective measures undertaken based upon the monthly quality assurance analysis required by paragraph 8.11 of this directive.

9. **ATTACHMENTS.**

- *Parole Advisal and Scheduling Notification.*
- *Record of Determination/Parole Determination Worksheet.*

10. **NO PRIVATE RIGHTS CREATED.** This directive is an internal policy statement of ICE. It is not intended to, shall not be construed to, may not be relied upon to, and does not create, any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

Approved: _____

John Morton
Assistant Secretary
U.S. Immigration and Customs Enforcement

USCIS Asylum Division
Data through FY 2013

Credible Fear Cases	FY-07	FY-08	FY-09	FY-10	FY-11	FY-12	FY-13
Subject to Expedited Removal	**111,448**	**118,457**	**111,394**	**120,075**	**123,180**	**183,691**	**Not available**
Referrals from CBP or ICE	**5,252**	**4,995**	**5,369**	**8,959**	**11,217**	**13,880**	**36,035**
Completed	5,286	4,828	5,222	8,777	11,529	13,579	36,174
CF Found	3,182	3,097	3,411	6,293	9,423	10,838	30,393
CF Not Found	1,062	816	1,004	1,404	1,054	1,187	2,587
Closed	1,042	915	807	1,080	1,052	1,554	3,194
Of cases decided on the merits, % where CF was found	74.98%	79.15%	77.26%	81.76%	89.94%	90.13%	92.16%
Of all referred cases, % where CF was found	60.20%	64.15%	65.32%	71.70%	81.73%	79.81%	84.34%

Source: USCIS Asylum Division, Asylum Pre-Screening System (APSS)

Affirmative Asylum Cases	FY-07	FY-08	FY-09	FY-10	FY-11	FY-12	FY-13
Applications Filed	**33,348**	**30,385**	**27,043**	**29,972**	**36,460**	**43,312**	**45,392**
Applications Received	25,674	25,505	24,553	28,444	35,067	41,883	44,446
Applications Re-opened	7,674	4,880	2,490	1,528	1,393	1,429	946
Cases Completed	**59,534**	**45,459**	**32,698**	**29,580**	**33,500**	**36,958**	**28,381**
Approved	10,191	9,796	9,614	9,174	10,700	12,991	10,981
Denied	3,996	4,188	1,992	958	1,064	922	766
Referred (Interviewed)	22,712	17,374	15,291	15,784	17,305	17,948	12,308
Referred (Un-interviewed)	4,535	3,227	1,721	1,871	2,807	3,714	3,293
Administratively Closed	18,100	10,780	3,900	1,677	1,529	1,318	1,001
Approval Rate	**28%**	**31%**	**36%**	**35%**	**37%**	**41%**	**46%**

Source: USCIS Asylum Division, Refugees, Asylum and Parole System (RAPS)

USCIS Asylum Division
Data through FY 2013

AFFIRMATIVE ASYLUM REPORT KEY	
Applications Filed	The total number of new asylum cases received and reopened cases.
Applications Received	The number of new asylum cases USCIS received during the fiscal year.
Applications Re-opened	The total number of previously administratively closed asylum cases that were reopened.
Cases Completed	The total number of cases approved, denied, adjudicated referred, referred (un-interviewed) and administratively closed.
Approved	The number of cases that USCIS approved for asylum status during the fiscal year.
Denied	The number of cases USCIS interviewed and found ineligible for asylum status while in lawful immigration status.
Referred (interviewed)	The number of cases USCIS interviewed and found ineligible for asylum status and referred to the Immigration Judge because the applicant was not in lawful immigration status.
Referred (Un-interviewed)	The number of cases USCIS referred to the Immigration Judge because the applicant failed to appear for interview, withdrew their asylum application, failed to appear for fingerprinting or related processing and was not in lawful immigration status.
Administratively Closed	The number of cases USCIS administratively closed for lack of jurisdiction, withdrawn/LPR, ineligible/USC, outside the US/abandoned, or denied for failure to appear (ABC).
Approval Rate (of adjudicated/interviewed cases)	Approved / (approved + denied + adjudicated referred) x 100

NOTE: Cases completed in any fiscal year could have been filed, received or reopened in previous fiscal years. Cases may include more than one individual i.e. an applicant and a spouse and/or children.

BREITBART

EXCLUSIVE--BORDER PATROL REP CLAIMS AGENTS BEING ORDERED TO STAND DOWN

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Send a Tip (/System /Breitbart%20Send%20A%20Tip?page=%2fBig-Government%2f2013%2f10%2f02%2fExclusive-Border-Patrol-Management-Orders-Agents-to-Stand-Down-While-Tracking-Smugglers)

by BRANDON DARBY (/COLUMNISTS/BRANDON-DARBY) 3 Oct 2013 | 1343 | POST A COMMENT (/BIG-GOVERNMENT/2013/10/02/EXCLUSIVE-BORDER-PATROL-MANAGEMENT-ORDERS-AGENTS-TO-STAND-DOWN-WHILE-TRACKING-SMUGGLERS#COMMENTS)

The National Border Patrol Council has come forward to reveal to the American public once again (http://www.breitbart.com/Big-Government/2013/09/30/Exclusive-Feds-Cooking-Books-on-Illegal-Immigration-says-Border-Patrol-Union) management practices that could be risking the lives of Americans -- and the lives of illegal immigrants.

Shawn Moran, Vice President of the National Border Patrol Council, spoke exclusively with Breitbart News and claimed that Border Patrol management has begun the practice of ordering Border Patrol Agents to stand down and cease pursuing drug smugglers, human smugglers and traffickers, and illegal aliens. He also warned it could lead to illegal aliens entering the country from nations associated with terrorism.

"It doesn't matter whether it's drugs, bodies, or how large the group is, our agents are being ordered to stand down by Border Patrol management," said Moran. "I have received reports from our agents in every single sector from San Diego to the Rio Grande Valley in Texas that they are receiving these orders."

"They are not being relieved in place, they are simply being told that someone else is being dispatched, but none of us have seen that occur," he explained. "We are simply being ordered to stand down and stop tracking and trying to apprehend the criminals." He discussed the importance of agents being relieved in place when tracking an individual or group.

"Border Patrol senior leadership says the stand downs are a means of addressing budgetary shortfalls and making sure agents aren't working longer shifts," Moran said. "The Border Patrol has a larger budget than ever, but the agents on the ground have not

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BREITBART VIDEO PICKS

Longest-Serving Congressman in History to Retire

Fox News National

Couple charged with murder in case of missing 20-year-old South Carolina woman (http://feeds.foxnews.com/~r/foxnews/national/~3/hq4y1B9J-K8/)
24 Feb 2014, 8:27 AM PDT

'Legendary' Missouri spelling bee on hold after organizers run out of words (http://feeds.foxnews.com/~r/foxnews/national/~3/I-06JIlsvE2o/)
24 Feb 2014, 7:28 AM PDT

Naval War College publishes online WWII operational diary of Nimitz, Pacific fleet commander (http://feeds.foxnews.com/~r/foxnews/national/~3/kzyIBs2O5BY/)
24 Feb 2014, 6:52 AM PDT

Kerry Kennedy drugged-driving trial to open in New York (http://feeds.foxnews.com/~r/foxnews/national/~3/KHOzXfJG_iA/)
24 Feb 2014, 6:32 AM PDT

Madoff's longtime former secretary may

seen the benefits of an increased budget. The increased budget has not trickled down to the men and women with their boots on the ground."

"They are placing the budgetary concerns before the security of our border," Moran stated. "We have situations where top-level bureaucrats in the U.S. Border Patrol and in the Customs and Border Protection Agency are receiving massive bonuses -- some up to $64,000 --- for finding ways to reduce the pay Border Patrol Agents receive."

"Groups that are outside of human trafficking, human smuggling, and drug smuggling are going to exploit these stand down orders as well, not only cartels but illegal aliens from nations that are tied to terrorism (http://www.breitbart.com/Big-Government/2013/07/07/UN-Warns-Mexican-Border-Global-Pathway-to-U-S-for-Illegals-from-Asia-Africa-and-Terror-State)," he warned.

testify at NY trial (http://feeds.foxnews.com/~r/foxnews/national/~3/orrZ6KOAFzA/)
24 Feb 2014, 6:06 AM PDT

Obama Plan: Cut Military to Pre-WWII Levels (http://www.newsmax.com/newswidget/pentagon-shrink-budget-pre/2014/02/24/id/554281?promo_code=11550-1&utm_source=11550Breitbart&utm_medium=nmwidget&utm_campaign=widgetphase1)

CNN Pulls Plug on Piers Morgan (http://www.newsmax.com/newswidget/piers-morgan-cnn-program-cancel/2014/02/23/id/554274?promo_code=11550-1&utm_source=11550Breitbart&utm_medium=nmwidget&utm_campaign=widgetphase1)

Susan Rice: No Regrets for Benghazi (http://www.newsmax.com/newswidget/US-attacks-Libya-politics/2014/02/23/id/554238?promo_code=11550-1&utm_source=11550Breitbart&utm_medium=nmwidget&utm_campaign=widgetphase1)

EPA Wood-Stove Plan Prompts Backlash (http://www.newsmax.com/newswidget/epa-wood-stove-ban/2014/02/23/id/554234?promo_code=11550-1&utm_source=11550Breitbart&utm_medium=nmwidget&utm_campaign=widgetphase1)

Maureen Dowd Slams Obama on Benghazi (http://www.newsmax.com/newswidget/maureen-dowd-obama-benghazi/2013/05/12/id/504043?promo_code=11550-1&utm_source=11550Breitbart&utm_medium=nmwidget&utm_campaign=widgetphase1)

Dramatically Increase Your Social Security Payments (https://w3.newsmax.com/LP/Finance/FPR/FPR-Bargain-Trial?promo_code=11550-1&utm_source=11550Breitbart&utm_medium=nmwidget&

Mr. GOODLATTE. And at this time, we will turn to our witnesses. We are very delighted to have all of our witnesses here today. And if you would all rise, I will begin by swearing you in.

[Witnesses sworn.]

Mr. GOODLATTE. Let the record reflect that all of the witnesses responded in the affirmative.

Thank you, and I will begin to introduce our witnesses. Please be seated.

Ms. Lori Scialabba, currently serves as the Deputy Director of U.S. Citizenship and Immigration Services, a position that she has held since May of 2011. Prior to being appointed Deputy Director, she served as the Associate Director of Refugee, Asylum, and International Operations.

Prior to joining the Department of Homeland Security, Ms. Scialabba served as chairman of the board of immigration appeals in the Executive Office for Immigration Review and the Department of Justice. She received her bachelor's degree in 1982 from the University of Maryland and her juris doctorate in 1985 from Memphis State University.

Mr. Daniel H. Ragsdale currently serves as the Deputy Director for Immigration and Customs Enforcement, the principal investigative agency of the Department of Homeland Security. In this capacity, he also serves as the agency's chief management officer, overseeing the Office of Management and Administration.

Mr. Ragsdale joined the former U.S. Immigration and Naturalization Service's General Counsel Office in 1996 and served as an attorney in New York, New York, as well as Tucson and Phoenix, Arizona. He received an undergraduate degree from Franklin and Marshall College and a J.D. from Fordham University School of Law.

Mr. Michael J. Fisher is the Chief of the U.S. Border Patrol and a member of the Senior Executive Service. In this role, he is responsible for planning, organizing, coordinating, and directing enforcement efforts designed to secure our Nation's borders. Chief Fisher entered on duty with the U.S. Border Patrol in June 1987 as a member of Class 208. His first duty assignment as a Border Patrol agent was at the Douglas Station in the Tucson sector.

Chief Fisher earned a bachelor's degree in criminal justice and a master's degree in business administration. He is also a graduate of the Senior Executive Fellows Program at the John F. Kennedy School of Government at Harvard University.

Ms. Ruth Wasem is the specialist in immigration policy at the Congressional Research Service, U.S. Library of Congress. In this capacity, she has researched, written, and presented for the U.S. Congress on immigration and social welfare policies.

She is also an adjunct professor of public policy at the Lyndon B. Johnson School of Public Affairs, University of Texas, where she teaches graduate courses on immigration policy. Ms. Wasem earned her master's and doctorate degrees in history at the University of Michigan and received her baccalaureate degree from Muskingum University.

Each of the witnesses' written statements will be entered into the record in its entirety, and I ask that each witness summarize

his or her testimony in 5 minutes or less. To help you stay within that time, there is a timing light on the table.

When the light switches from green to yellow, you will have 1 minute to conclude your testimony. When the light turns red, it signals that the witness' 5 minutes have expired.

Welcome again to all of you. And Ms. Scialabba—oh, I am sorry. We are going to go first to Mr. Fisher.

TESTIMONY OF MICHAEL J. FISHER, CHIEF OF THE U.S. BORDER PATROL, CUSTOMS AND BORDER PATROL

Mr. FISHER. Chairman Goodlatte, Ranking Member Conyers, distinguished Members of the Committee, it is a privilege and, indeed, an honor to appear before you today to discuss U.S. Customs and Border Protection's efforts to secure the borders.

As this Committee is aware, the mission of the United States Border Patrol is to reduce the likelihood of attack to the United States while providing safety and security to its citizens against dangerous people seeking entry into the United States to do us harm.

In the process of fulfilling this mission obligation, we employ a risk-based approach. Simply stated, we assess threats and vulnerabilities in order to deploy our greatest capabilities and resources against the highest risk. We execute this mission in a number of ways, not the least of which is through the predominant use of information and intelligence.

It was one of these field intelligence reports that was the focus of an article that appeared in the Washington Times last month, describing a potential emerging threat and vulnerability surrounding the credible fear process. The report was authored by the Unified Command within the Alliance to Combat Transnational Threats, also called the ACTT, in El Paso, Texas.

The ACTT has been in existence for a few years and is designed and structured to foster integrated operations. ACTT members include Federal, State, and local stakeholders from a number of sectors, the majority being law enforcement. As with most field intelligence reports, the dissemination within the ACTT community was wide, as designed, and labeled for official use only.

This is common practice to not only protect sources and methods, but to preserve the interagency information in the event of criminal prosecution, which, in many cases, is the desired end state. It is too early for me to assess either the potential emerging threat or vulnerability from the single report. However, as we continue to collect against the illicit networks, as well as the identified intelligence gaps described in the report, and as we broaden our analytical effort, we will be—we will be in a better position to assess both.

Chairman Goodlatte, Ranking Member Conyers, and again, distinguished Members of this Committee, thank you for the opportunity to testify today. I look forward to answering your questions.

Mr. GOODLATTE. Thank you, Mr. Fisher.

Now we will turn to Ms. Scialabba.

TESTIMONY OF LORI SCIALABBA, DEPUTY DIRECTOR, U.S. CITIZENSHIP AND IMMIGRATION SERVICES

Ms. SCIALABBA. Thank you, Chairman Goodlatte, Ranking Member Conyers, and distinguished Members of the Judiciary Committee——

Mr. GOODLATTE. You may want to pull the microphone a little closer to you.

Ms. SCIALABBA. Oh, sure. It makes my eyes cross. [Laughter.]

Mr. GOODLATTE. Sorry.

Ms. SCIALABBA. Thank you for the opportunity to testify at today's hearing, alongside with my colleagues from Customs and Border Protection and Immigration and Customs Enforcement.

As you mentioned, I'm Lori Scialabba, Deputy Director of U.S. Citizenship and Immigration Services, and my testimony today will focus on how USCIS supports U.S. efforts related to border security while upholding our refugee protection obligations.

The United States has a long and proud history of providing humanitarian protection. We are signatories to the 1967 protocol relating to the status of refugees, which bars contracting states from returning refugees to their countries of feared persecution.

Our obligations under the protocol are primarily implemented through our Nation's asylum process, which involves proceedings under two tracks, one in which an individual applies for asylum affirmatively with a USCIS asylum officer and the other in which an individual seeks asylum before an immigration judge with the Department of Justice. At the borders, individuals who wish to apply for asylum are initially processed through the expedited removal program, which will be the subject of the remainder of my testimony.

Prior to the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, all individuals apprehended attempting to enter the United States unlawfully were placed in full proceedings before an immigration judge. These proceedings were time consuming and resource intensive. Individuals in such proceedings were generally not detained.

The 1996 reforms allowed for the expedited removal of individuals seeking admission at air, land, and sea ports of entry without proper documentation. In 2004, the Department of Homeland Security implemented regulations expanding expedited removal to apply to individuals apprehended close to a U.S. border shortly after an illegal entry.

All individuals placed in expedited removal proceedings are subject to mandatory detention and prompt return to their countries of origin. In creating this new removal process, however, Congress was mindful of the United States treaty obligations relating to the status of refugees and created a screening process known as credible fear to prevent persons from being returned to a country in which they would be persecuted or tortured.

The USCIS Asylum Division administers the credible fear program. The credible fear screening is the third stage of the expedited removal process for individuals who express a fear of return or indicate an intention to apply for asylum. They are first encountered and placed into expedited removal by CBP. They are then detained by ICE, pending their credible fear interviews.

USCIS is the third agency to encounter the individual in the expedited removal process. USCIS conducts a credible fear interview to determine whether there is a significant possibility that the individual will be found eligible for asylum or withholding of removal. This determination does not confer any immigration benefit. It is simply a screening process employed.

The final decision on asylum eligibility rests with an immigration judge. Credible fear interviews are conducted by a USCIS asylum officer while the individual is detained by ICE. Asylum officers comprise a professional cadre within USCIS, dedicated full time to the adjudication and screening of protection claims. They are extensively trained in national security issues, the security and law enforcement background check process, eligibility criteria, country conditions, interview techniques, making proper credibility determinations, and fraud detection.

During the credible fear interview, individuals are questioned regarding their biographic information, their fear of persecution or torture, and whether there are concerns that may make them ineligible for asylum.

USCIS conducts security checks, including biographic and biometric checks. USCIS coordinates with ICE and other law enforcement authorities as appropriate if there are reasonable grounds to believe that an individual may have engaged in criminal activity or is a security risk.

While information relating to asylum seekers is sensitive and generally protected from disclosure, regulations and policies allow for USCIS to share information with law enforcement agencies for investigative and intelligence purposes, which is done routinely. As CBP and ICE have already encountered the individual early in the expedited removal process, they have also already conducted security checks on the individual. ICE relies on its security checks to inform any decision to release the individual from custody.

If USCIS determines the individual does have a credible fear, he or she is subject to removal—does not have a credible fear, he or she is subject to immediate removal unless the individual requests a limited review of USCIS's credible fear finding by an immigration judge. And an immigration judge can overrule our decision. If the immigration judge agrees with the USCIS that the individual does not have a credible fear, then the individual is removed.

And I see my time is almost up. So I will thank you for the opportunity.

Mr. GOODLATTE. Thank you.

Mr. Ragsdale, welcome.

TESTIMONY OF DANIEL H. RAGSDALE, DEPUTY DIRECTOR, IMMIGRATION AND CUSTOMS ENFORCEMENT

Mr. RAGSDALE. Good morning. Chairman Goodlatte, Ranking Member Conyers, and distinguished Members of the Committee, on behalf of the men and women of the U.S. Immigration and Customs Enforcement, thank you for the opportunity to appear today to discuss the role ICE plays in protecting border security.

ICE's primary mission is to promote homeland security and the public safety through the criminal and civil enforcement of the Fed-

eral laws governing border control, customs, trade, and immigration. ICE is the principal investigative arm of the Department of Homeland Security.

ICE has two primary operating components, the Office of Homeland Security Investigation and the Office of Enforcement and Removal Operations. ERO's primary role is to enforce our Nation's immigration laws in a way that impacts public safety and border security. HSI is responsible for investigating and referring for criminal prosecution crimes related to human smuggling, trafficking, narcotics and weapons smuggling, counterproliferation, commercial fraud, child exploitation, among others.

ICE also relies on a team of nearly 1,000 attorneys to fulfill its civil and criminal enforcement missions. In addition, ICE's Office of Professional Responsibility promote security and the integrity of ICE's workforce through investigating allegations of misconduct.

Over the past 4 years, ICE has focused its resources on the rule of individuals who fit within our enforcement priorities. These priorities include people who are risks to national security, public safety, such as convicted criminals, recent illegal border crossers, and those who have struck immigration controls.

Through this focus, ICE has been able to help ensure our public safety and seen solid success in enforcing this Nation's immigration laws. These successes could not be achieved without the implementation of smart, effective, and efficient policies and our close working relationship with our DHS partners in order to meet our goals.

For instance, 44 percent of the ICE detainees in our custody came from CBP. Our joint efforts are critical to the Nation's border security. As discussed by ICE's partners in their statements, individuals who are apprehended while attempting to unlawfully enter the United States and who indicate a fear of persecution or torture and an intent to apply for asylum are detained by ICE until they can present their claim to a specially trained USCIS asylum officer, who conducts a detailed screening for potential asylum eligibility.

In December 2009, former Director John Morton issued a revised directive on the parole of arriving aliens found to have a credible fear of persecution or torture to ensure transparent and consistent parole determinations for arriving aliens seeking protection in the United States. Under this policy, aliens who arrive in the United States at a port of entry and who are found to have a credible fear of persecution or torture are considered for parole.

While our procedures reflect the sound public policy position of favoring parole in positive credibility of fear cases, ICE takes its law enforcement responsibilities seriously and carefully considers each and every parole decision and balances with a need to protect public safety.

As tactical requirements ebb and flow, we have redoubled our efforts to be nimble and collaborative as we respond to changing operational needs. We have put policies and infrastructure in place to do just that.

For example, ICE targets and investigates the most dangerous transnational human smuggling organizations through the Illicit Pathways Attack Strategy, or IPAS. ICE designed this program to build, balance, integrate its authorities and resources, both foreign

and domestic, in a focused, comprehensive manner to target, disrupt, and dismantle transnational organized crime.

In fiscal year 2013 alone, to address the crime of human smuggling and the additional threat it brings to border security, ICE arrested approximately 2,700 alien smugglers, obtained indictments and convictions against 3,600 individuals, and initiated almost 2,000 smuggling investigations.

In addition to combating transnational human smuggling organizations, we also target individuals and organizations who attempt to gain legal status in the United States through fraudulent means or identity theft. To combat these criminal threats, ICE has established 19 document and benefit fraud task forces throughout the U.S.

As a result of these task forces, combined with our investigative efforts, in fiscal year 2013, we made over 1,500 criminal arrests for immigration fraud, identity theft, an increase of approximately 20 percent since 2009.

In sum, ICE remains committed to a detention policy that ensures violent priority aliens remain in custody while managing limited resources by providing effective alternatives for nonpriority aliens, commensurate with the risk they present. Current parole procedures for asylum seekers help ICE making custody determinations on a case-by-case basis while focusing both on protecting against threats to public safety and maintaining control of the Nation's borders.

Thank you for the opportunity to testify, and I look forward to the questions you may have.

[The joint prepared statement of the U.S. Department of Homeland Security follows:]

COMBINED DHS WRITTEN TESTIMONY

FOR A HEARING ON

"Asylum Abuse: Is it Overwhelming our Borders?"

BEFORE
THE HOUSE COMMITTEE ON THE JUDICIARY

DECEMBER 12, 2013
10:00 AM
2141 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC

Introduction

Chairman Goodlatte, Ranking Member Conyers, and distinguished members of the Judiciary Committee: Thank you for the opportunity to testify at today's hearing. The joint testimony today will focus on how the following DHS agencies, U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and U.S. Custom and Border Protection (CBP), support U.S. efforts related to border security while upholding our refugee protection obligations.

The United States has a long history of providing humanitarian protection to refugees and other vulnerable individuals and is a party to the 1967 Protocol relating to the Status of Refugees and the Convention against Torture (CAT). As parties to the 1967 Protocol and CAT, we are committed to abiding by our non-refoulement obligations – to refrain from returning eligible individuals to countries where they would more likely than not face torture or persecution. Our non-refoulement obligations under the Protocol and the CAT are implemented in the immigration context through various laws and regulations.

The Expedited Removal and Credible Fear Processes

Prior to the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), individuals seeking admission to the United States at a port of entry or those apprehended attempting to enter the United States unlawfully were able to present their requests for asylum directly to an Immigration Judge within the Department of Justice's (DOJ's) Executive Office for Immigration Review (EOIR). IIRIRA, however, amended the Immigration and Nationality Act (INA) to allow for the expedited removal of individuals who lack required documentation or possess improper documentation at ports of entry. DHS also applies the

expedited removal process to individuals who are present without admission and encountered by an immigration officer within 100 air miles of the United States border and who were not physically present in the United States for the 14-day period immediately before their arrest as well as to aliens unlawfully arriving in the United States by sea.

The expedited removal provision was designed to deter individuals from entering the United States illegally and to streamline what had been a lengthy, resource-intensive process that required a hearing and order of deportation or exclusion from an Immigration Judge, a process that could take months or years to complete. Under the expedited removal process, when an immigration officer determines that an individual is inadmissible, the individual is ordered removed from the U.S. without a hearing before an Immigration Judge.

To ensure that the United States maintains compliance with its international treaty obligations relating to non-refoulement, however, individuals subject to expedited removal who indicate a fear of persecution or torture or who indicate an intent to apply for asylum are detained by ICE until they can present their claim to a specially trained USCIS asylum officer who conducts a detailed screening for potential asylum eligibility. These officers are a professional cadre within USCIS, dedicated full-time to the adjudication or screening of protection claims. They are extensively trained in national security issues, the security and law enforcement background check process, eligibility criteria, country conditions, interview techniques, making proper credibility determinations, and fraud detection.

The Role of CBP At U.S. Ports of Entry

When an alien arrives in the United States by air, land or sea, the alien must present himself or herself to a CBP officer for inspection at a U.S. port of entry. If the alien lacks

required documentation or possesses improper documentation, he or she may be placed in Expedited Removal (ER) and referred to secondary inspection for a sworn statement and to complete forms under 8 C.F.R. 235.3. If during this process the alien expresses a fear of return to his or her country, or an intention to apply for or request asylum from the United States, the alien will be referred to a USCIS asylum officer for a credible fear interview. The alien must be detained per section 235(b)(1)(B)(iii)(IV) of the INA and turned over to ICE Enforcement and Removal Operations (ERO) pending the credible fear interview. Every alien encountered at a U.S. port of entry undergoes a full inspection that includes national security, law enforcement, immigration, customs, and agricultural components.

The Role of CBP Between U.S. Ports of Entry

Border Patrol agents (BPA) receive training on the ER process and how to identify the applicable charges, recognize the conditions making an alien subject to ER, and proper protocols for the overall management of aliens through the ER process. The training includes recognizing the circumstances that require a referral to USCIS for a credible fear interview.

During ER processing, BPAs inquire whether the alien has any fear of persecution or torture, or a fear of return to his/her home country. If the alien expresses an intention to apply for asylum, or a fear of persecution or torture, or a fear of return to his/her home country, the alien is detained by ICE ERO and referred to a USCIS asylum officer for a credible fear interview.

Only asylum officers are authorized to make credible fear determinations. If during the booking process, the alien expresses a fear of return to his/her country, the local USCIS Asylum Office is contacted and provided with the relevant case forms to initiate the credible fear process. This

may occur before or after remanding custody to the local ICE facility depending on local agreements between ICE, USCIS and CBP. In all cases, the credible fear interview is conducted after the alien is remanded to ICE custody.

The Credible Fear Screening Process

Individuals in ER proceedings, including those who indicate a fear of persecution or who indicate an intent to apply for asylum, are subject to mandatory detention (with few exceptions). Credible fear interviews therefore are generally conducted by USCIS officers while the individual is in ICE detention. Credible fear determinations are made promptly. Since June 2013, the USCIS credible fear screening process has taken an average of 8 days to complete following ICE notification that an individual subject to expedited removal has indicated a fear of return. During Fiscal Year (FY) 2013, the average number of days between the date when an individual was detained in the ER process and the date the individual was referred to the USCIS Asylum Division for the scheduling of a credible fear interview was 19 days.

During the credible fear interview, individuals are questioned regarding their biographic information, their fear of persecution or torture, and whether there are any concerns that may make them ineligible for asylum. While regulations issued in December 2000 prohibit USCIS from taking mandatory bars into account during the credible fear screening, asylum officers must explore whether any mandatory bars are implicated during each credible fear interview. Mandatory bars to a grant of asylum include the persecutor bar, a conviction for a "particularly serious crime," having committed a serious non-political crime outside of the United States, being a security risk to the United States, and terrorism grounds. Asylum officers document this information in the interview notes that are taken contemporaneously with the interview.

Wherever any derogatory information is uncovered that could implicate a mandatory bar, either through security checks or the alien's testimony, the information is flagged for ICE, and available for the ICE attorneys in the event they have a hearing before an Immigration Judge. USCIS coordinates with ICE and other law enforcement authorities, as appropriate, if there are reasonable grounds to believe that an individual may be barred for criminal activity, is a security risk, belongs to a terrorist organization or is a human rights violator. The Immigration Judge would make a determination on whether a mandatory bar applies during the removal proceedings.

Historically, only a small percentage of individuals placed in expedited removal proceedings have expressed a fear of return. However, the percentage has risen over time. From FY 2000 through FY 2009, the annual percentage of individuals subject to expedited removal who expressed a fear of return ranged from 4-6%. From FY 2010 through FY 2012, the annual percentage ranged from 7-9%. During FY 2013, approximately 15% of the individuals placed into expedited removal expressed a fear of return and were placed in the credible fear screening process. Despite this increase, expedited removal proceedings have been effective and have saved significant resources since their implementation in 1997 while also ensuring that the United States upholds its international treaty obligations regarding non-refoulement. Before the implementation of the expedited removal process, every individual subject to ER would have been entitled to a hearing before an Immigration Judge where they could apply for asylum.

Security Screening in the Credible Fear Process

In addition to the detailed credible fear interview, USCIS conducts security checks including biographic (TECS[1]) and biometric (IDENT) checks during the credible fear process to assess identity and inform lines of questioning. TECS is owned and managed by CBP and is its principal law enforcement and national security system. TECS contains various types of information from a variety of Federal, state, local, and foreign sources, and the database contains records pertaining to known or suspected terrorists, wanted persons, and persons of interest for law enforcement and counterterrorism purposes. IDENT is a DHS system managed by the National Protection and Programs Directorate's (NPPD) Office of Biometric Identity Management (OBIM), and includes biometric information related to the travel history of foreign nationals and watchlist information. It also contains visa application information owned by the Department of State. This system is used to confirm identity, determine previous interactions with government officials and detect imposters. Asylum officers conduct a mandatory check of both TECS and IDENT during the credible fear process. Asylum officers also ensure that the Federal Bureau of Investigation (FBI) name check and fingerprint checks have been initiated.

As previously noted, most aliens are detained by ICE throughout the credible fear screening process. Based on the interview and all available evidence, the USCIS asylum officer determines whether or not the individual established a credible fear of persecution or torture. The USCIS asylum officer's determination as well as information on the individual's identity, including how he or she established it, results of the security checks, and any adverse information is recorded and placed in the alien's file upon completion of the credible fear process. This information is then provided to ICE.

[1] TECS—not an acronym—is the primary law enforcement and national security database which contains enforcement, inspection, and intelligence records.

The Credible Fear Standard

As defined by statute, in order to establish a credible fear of persecution or torture, the asylum officer must find that a "significant possibility" exists that the individual could establish eligibility for asylum or withholding of removal. The purpose of this screening standard is to dispose of claims where there is no significant possibility of success, while not foreclosing viable claims. This procedural safeguard allows the expedited removal process to act as an efficient mechanism in maintaining border security while ensuring compliance with the United States' international treaty obligations regarding non-refoulement.

Several months ago, USCIS initiated a review of the training materials and guidance used by the Asylum Division to instruct asylum officers on the credible fear standard. This review has included the engagement of EOIR, ICE and CBP. After more than fifteen years since the establishment of the expedited removal/credible fear screening process, a review was necessary to make certain that our application of the credible fear standard properly reflects a significant possibility that claims for asylum or protection under the Convention Against Torture will succeed when made before an Immigration Judge. This review has recently been completed and asylum officers will soon receive training on the updated guidance.

Credible Fear Determinations

Like affirmative asylum decisions, 100 percent of credible fear determinations undergo supervisory review. Individuals who are ultimately found not to have a credible fear are subject to immediate removal by ICE, unless they request a limited review of the USCIS asylum

officer's determination by an Immigration Judge. The Immigration Judge can overrule the asylum officer's decision and find the individual does have a credible fear.

If the individual establishes a credible fear of persecution or torture, USCIS issues a Notice to Appear (NTA) and the individual is placed in removal proceedings before an Immigration Judge at which point he or she can seek asylum or other forms of relief or protection from removal. With the issuance of the NTA, USCIS' role in the ER process is completed. The Immigration Judge ultimately determines whether the individual is eligible for asylum or any other requested forms of relief or protection.

During the pendency of the removal proceedings, certain individuals are entitled to a custody hearing before the Immigration Judge. Aliens arriving at a Ports-of-Entry (POE), however, are only eligible for parole. Parole determinations are made by ICE and are not reviewed by an Immigration Judge. DHS has adopted parole standards to determine whether individuals should be paroled into the United States during the pendency of the removal proceedings. Aliens apprehended between the POEs who demonstrate a credible fear of persecution or torture are eligible for release. If detained, these aliens who are placed in removal proceedings are eligible for a bond hearing before an Immigration Judge.

During FY 2013, 65% of credible fear referrals involved nationals of El Salvador, Honduras, and Guatemala; just over 7% were Mexican nationals.

Developments in the ICE Parole Policy

Parole is an administrative measure, provided under section 212(d)(5) of the INA. ICE uses this parole authority to release inadmissible aliens who arrive at a port of entry and are found to have a credible fear of persecution or torture. Parole is not a lawful admission or a

determination of an alien's admissibility, and can be conditioned upon such terms as the posting of a bond or other guarantee.

On December 8, 2009, former ICE Director John Morton issued a revised directive on "Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture" to ensure transparent and consistent parole determinations for arriving aliens seeking protection in the United States. Under this policy, aliens who arrive in the United States at a port of entry and who are found to have a credible fear of persecution or torture are considered for parole.

The policy added heightened quality assurance safeguards, such as a nationwide analysis of number of paroled aliens and their compliance rates. Further, while the prior policy allowed ICE officers to grant parole based on a determination of the public interest, it did not concretely define this concept. By contrast, the directive explains that ICE may parole aliens found to have a credible fear who (1) establish their identities and (2) pose neither a flight risk nor a danger to the community, if (3) no additional factors weigh against their release.

Protections in the ICE Credible Fear-Parole Process

By definition, aliens in the expedited removal process lack valid travel documents, so ICE must verify the alien's identity before release from custody. When considering parole for an arriving alien found to have credible fear, ICE Enforcement and Removal Operations officers review all relevant documentation and databases to determine if the alien can reasonably establish his or her identity. No alien is paroled without undergoing a comprehensive background check to identify any possible public safety or national security issues. Relevant information for this determination includes evidence of past criminal activity, both in the

United States and abroad; disciplinary infractions or incident reports; and any criminal or detention history showing that the alien has harmed or would harm others.

In addition, the alien must present sufficient evidence demonstrating that he or she will appear for the immigration hearing when required in order to be considered for parole. Some of the factors considered include family and community ties, employment history, record of appearance for prior court hearings, compliance with past reporting requirements, and ability to post bond. The alien must also provide an address where he or she will reside and must timely inform ICE and any other DHS agency (if required) of any change of address.

While ICE's procedures reflect the sound public policy position of favoring parole in positive credible fear cases where identity is established, and any flight risk and public safety concerns are alleviated, these procedures safeguard the ultimate discretion of the agency to deny parole. In particular, the 2009 policy specifically recognized that parole "remains an inherently discretionary decision" that can be affected, even in positive credible fear cases, by additional factors, like "overriding law enforcement interests." ICE takes its law enforcement responsibilities seriously, carefully considers each and every parole decision, and balances it with the need to protect border security.

Affirmatively Filed Asylum Applications

Individuals in the United States who are not subject to expedited removal may seek asylum in one of two ways: either by applying for asylum "affirmatively" with USCIS or "defensively" while in removal proceedings before an Immigration Judge. In general, any individual present in the United States and not in removal proceedings may file an affirmative asylum application with USCIS. Affirmative asylum procedures require an in-depth, in-person

interview of every principal asylum applicant. This interview is conducted by the same specially trained asylum officers who conduct credible fear screening interviews.

The asylum officer fully explores the applicant's persecution claim, considers country of origin information and other relevant evidence, assesses the applicant's credibility and completes required security and background checks. The asylum officer then determines whether the individual is eligible for asylum and drafts a decision. Supervisors review 100 percent of asylum officers' determinations prior to issuance of a final decision. If the asylum officer does not grant the asylum application, in most cases the applicant is placed in removal proceedings for a hearing before an Immigration Judge, including a decision on the asylum claim and any other claims for relief from removal. Information used to make a determination on the individual's claim, including the interview notes, biographic information, completed security checks and decisional documents, is placed into the individual's file and is available for use by ICE attorneys during removal proceedings.

Defensively Filed Asylum Applications

Individuals who have been placed in removal proceedings before an Immigration Judge receive a full hearing and have the right to request certain types of relief from removal, including, with few exceptions, asylum.

Background Checks in the Affirmative Asylum Process

Before individuals are granted asylum, they must all establish identity and pass all requisite national security and law enforcement background security checks. Each asylum applicant is subject to extensive biometric and biographic security checks. Both law

enforcement and intelligence community checks are required – including checks against the FBI, the Department of Defense, the Department of State, and other agency systems.

In conducting background screenings, asylum applicants are first checked against the USCIS Central Index System to determine if they have previously been issued an alien number. They are also screened against TECS, CBP's primary law enforcement and national security database which contains enforcement, inspection, and intelligence records. For applicants ages 14 through 79, an FBI search is conducted of the person's name(s) and date(s) of birth. A USCIS Application Support Center takes a complete set of fingerprints and biometrics (signature, photograph and index print) of asylum applicants between the ages of 12 years 9 months and 79 years. The FBI electronically searches the fingerprints within the Integrated Automated Fingerprint Identification System. The 10-prints are also electronically submitted to the IDENT database, where they are stored and matched to existing fingerprint records. This system is used to confirm identity and determine previous interactions with government officials. In addition, a biometric check against the DOD Automated Biometric Identification System (ABIS) is conducted for certain cases. The Asylum Division also screens all asylum information against the National Counterterrorism Center's terrorism holdings. Finally, the Asylum Division conducts biometric checks of certain applicants against Canadian, United Kingdom, Australian, and New Zealand holdings through an agreement under the Five Country Conference (FCC). We expect to move to 100% biometric checks through the FCC by the end of FY 2014.

Conclusion

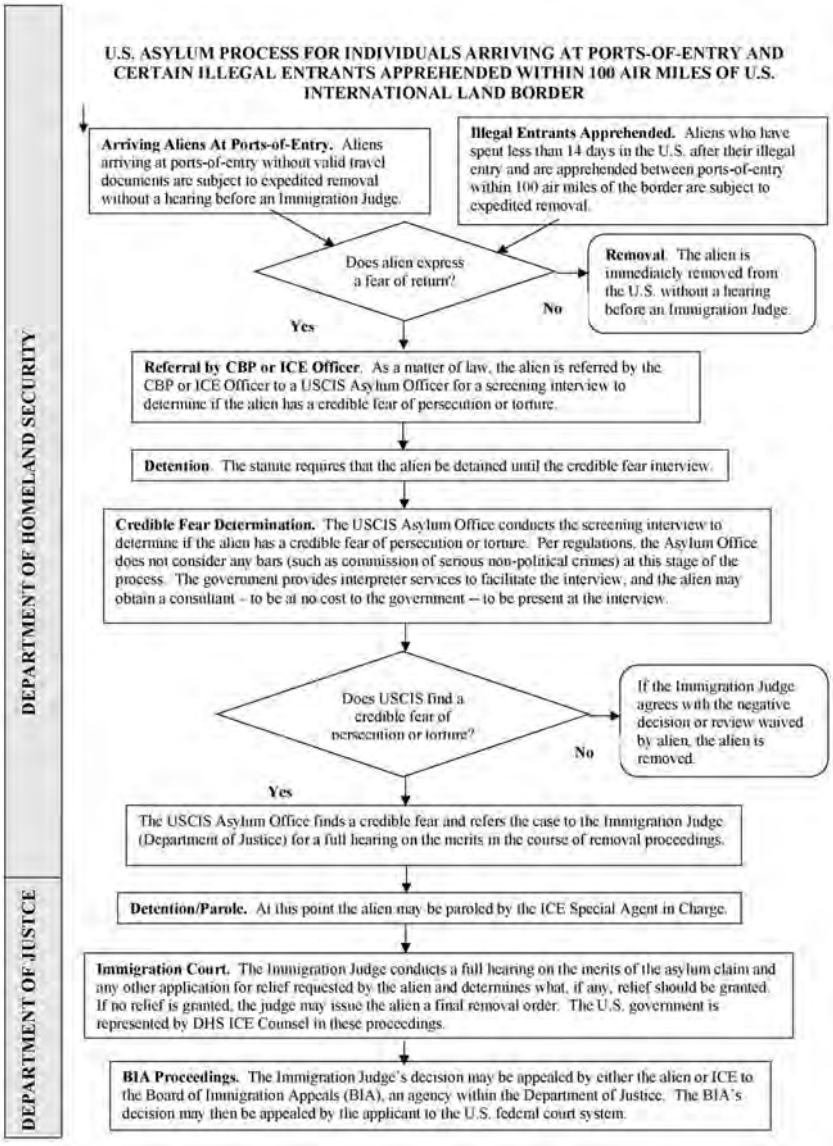
The credible fear screening process and the established system that allows for individuals to seek asylum in the United States support efforts to effectively and efficiently meet our

international obligations to provide humanitarian protection to refugees and other vulnerable individuals while maintaining the integrity of the immigration system and national security. USCIS carries out these programs in a manner aimed to protect those who deserve it, while safeguarding the integrity of the programs from those who do not merit protection.

The expedited removal process is a critical tool for effective border management. The credible fear screening process that identifies individuals potentially in need of protection in the larger expedited removal framework affords those border efficiencies while ensuring U.S. compliance with its international treaty obligations relating to non-refoulement. Prior to IIRIRA, *all* individuals apprehended while unlawfully entering the United States were placed in deportation or exclusion proceedings before an Immigration Judge – such a framework today would overwhelm DHS's and DOJ's already stretched resources.

It is important to note that an asylum officer's positive credible fear finding does not confer an immigration benefit or guarantee any lawful status in the United States. Rather, a finding of a credible fear results only in an individual's opportunity to present his or her protection claim before an Immigration Judge in removal proceedings.

Thank you again for the opportunity to testify. We would be happy to answer your questions.


U.S. ASYLUM PROCESS FOR INDIVIDUALS ARRIVING AT PORTS-OF-ENTRY AND CERTAIN ILLEGAL ENTRANTS APPREHENDED WITHIN 100 AIR MILES OF U.S. INTERNATIONAL LAND BORDER
DEPARTMENT OF HOMELAND SECURITY
DEPARTMENT OF JUSTCE
Arriving Aliens At Ports-of-Entry. Aliens arriving at ports-of-entry without valid travel documents are subject to expedited removal without a hearing before an Immigration Judge.
Illegal Entrants Apprehended. Aliens who have spent less than 14 days in the U.S. after their illegal entry and are apprehended between ports-of-entry within 100 air miles of the border are subject to expedited removal.
Does alien express a fear of return?
No
Removal. The alien is immediately removed from the U.S. without a hearing before an Immigration Judge.
Yes
Referral by CBP or ICE Officer. As a matter of law, the alien is referred by the CBP or ICE Officer to a USCIS Asylum Officer for a screening interview to determine if the alien has a credible fear of persecution or torture.
Detention. The statute requires that the alien be detained until the credible fear interview.
Credible Fear Determination. The USCIS Asylum Office conducts the screening interview to determine if the alien has a credible fear of persecution or torture. Per regulations, the Asylum Office does not consider any bars (such as commission of serious non-political crimes) at this stage of the process. The government provides interpreter services to facilitate the interview, and the alien may obtain a consultant – to be at no cost to the government – to be present at the interview.
Does USCIS find a credible fear of persecution or torture?
No
If the Immigration Judge agrees with the negative decision or review waived by alien, the alien is removed.
Yes
The USCIS Asylum Office finds a credible fear and refers the case to the Immigration Judge (Department of Justice) for a full hearing on the merits in the course of removal proceedings.
Detention/Parole. At this point the alien may be paroled by the ICE Special Agent in Charge.
Immigration Court. The Immigration Judge conducts a full hearing on the merits of the asylum claim and any other application for relief requested by the alien and determines what, if any, relief should be granted. If no relief is granted, the judge may issue the alien a final removal order. The U.S. government is represented by DHS ICE Counsel in these proceedings.
BIA Proceedings. The Immigration Judge's decision may be appealed by either the alien or ICE to the Board of Immigration Appeals (BIA), an agency within the Department of Justice. The BIA's decision may then be appealed by the applicant to the U.S. federal court system.

Mr. GOODLATTE. Thank you, Mr. Ragsdale.
Ms. Wasem, welcome.

TESTIMONY OF RUTH ELLEN WASEM, SPECIALIST IN IMMIGRATION POLICY, CONGRESSIONAL RESEARCH SERVICE

Ms. WASEM. Thank you.

Chairman Goodlatte, Ranking Member Conyers, and distinguished Members of the Judiciary Committee, I am honored to be testifying this morning on behalf of the Congressional Research Service.

My summary will provide a backdrop on your basic question: Is asylum abuse overwhelming our borders? In summation, there are three avenues—I'll reiterate a bit of what Lori had testified on—three avenues to receive asylum.

The first avenue is the affirmative, when a foreign national who is in the United States and not involved in any removal proceeding applies for asylum with a USCIS immigration officer. The second route, a defensive application is when a foreign national is in removal proceedings and asserts a claim for asylum as a defense to that removal proceeding before an immigration judge. And the third avenue, which is the principal topic of this morning's hearing, is the credible fear review, which is triggered when a foreign national arriving without proper documentation is placed in expedited removal and expresses a fear of persecution.

In this last instance, the foreign national is then put in the second path I mentioned, the defensive path, and goes before an immigration judge. In all of these instances, to be eligible for asylum, the foreign national must demonstrate a well-founded fear of persecution that if returned home, they will be persecuted based upon one of five characteristics—race, religion, nationality, membership in a particular social group, or political opinion.

The credible fear threshold is—means that there is a significant possibility that the foreign national could establish eligibility for asylum under one of those five enumerated grounds I just listed.

These avenues and the standards for asylum are based on a substantial legislative history, three I want to mention. The Refugee Act of 1980, which codified the definition from the Refugee Protocol of 1967 in the Immigration Act.

Secondly, the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996, which made substantial changes to the asylum process. And among the most significant of those changes are the provisions which created expedited removal and added the credible fear review process. The '96 law also requires mandatory detention of foreign nationals in expedited removal while they seek their credible fear determination.

Thirdly, the REAL ID Act of 2005, which established express standards for proof for asylum seekers.

Now I'm going to turn to some—a brief summary of some of the statistical trends that I found in preparing this testimony. Three points. Overall, asylum trends are down. Credible fear claims are up. And a handful of countries are driving these increases.

Let's look at Figure 1, where you can see that since the mid '90's, both the affirmative and the defensive asylum claims have de-

creased. There was a slight increase since 2010, but the numbers have not yet reached the levels of the earlier years.

As you can also see from Figure 1 in my testimony, the number of asylum cases approved has remained rather steady, except for an uptick in the early part of this century. Otherwise, the number of cases approved by both the immigration judges and the asylum officers and USCIS remains relatively the same.

This next chart, of course, is where you see the big surge. Since—in the past year, since 2013, there has been a more than doubling of individuals expressing credible fear during expedited removal.

Figure 7 reveals that a handful of countries are driving this increase. El Salvador, Guatemala, and Honduras, and to a lesser extent, Mexico, India, and Ecuador. All but India are Western Hemisphere countries. This trend is similar when you look at the acceptance of the credible fear cases.

Let me conclude by making this observation. An increase in asylum or credible fear claims, in and of itself, does not signify an increase in abuse of the asylum process any more than a reduction in asylum claims in credible fear would signify a reduction in abuse. While the current levels of asylum and credible fear do not yet approach that of two decades ago, the question for today is whether they have risen to a level that might strain the system that is designed to both protect refugees and control our borders.

I'm happy to answer your questions.

[The prepared statement of Ms. Wasem follows:]

Congressional Research Service
Informing the legislative debate since 1914

U.S. House of Representatives Committee on the Judiciary
Hearing on "Asylum Abuse: Is it Overwhelming our Borders?"
December 12, 2013

Ruth Ellen Wasem
Specialist in Immigration Policy
Congressional Research Service

Chairman Goodlatte, Ranking Member Conyers, and members of the Committee, I am honored to be testifying before you today on behalf of the Congressional Research Service. As a backdrop, the testimony provides an overview of current policy and a brief summary of its legislative history. To address the question – is asylum abuse overwhelming our borders? – I will present an analysis of asylum trends over time.

Basic Principles

The United States has long held to the principle that it will not return a foreign national to a country where his or her life or freedom would be threatened. This principle is embodied in several provisions of the Immigration and Nationality Act (INA), most notably in provisions defining refugees and asylees. To be eligible for asylum, aliens seeking asylum must demonstrate a well-founded fear that if returned home, they will be persecuted based upon one of five characteristics: race, religion, nationality, membership in a particular social group, or political opinion.[1] Aliens granted asylum generally are not subject to removal from the United States and may be authorized to work in the United States and to travel outside the United States. Aliens granted asylum eventually may adjust to lawful permanent resident (LPR) status, and eventually apply for U.S. citizenship. (For a fuller discussion, also see "Legislative History," below.)

While potential refugees are selected for admission through a process wholly outside the United States, an applicant for asylum begins the process either already in the United States or at a U.S. port of entry.[2] Depending on the circumstances, three different avenues exist for aliens to seek asylum: "affirmative applications," "defensive applications," and applications based on a "credible fear" claim during expedited removal. The affirmative and defensive applications follow different procedural paths, but draw on the same legal standards. Applicants seeking asylum through credible fear interviews must meet a lower threshold initially, but ultimately also meet the same legal standard. In all three processes, the burden of proof is on the asylum seeker to establish that he or she meets the refugee definition specified in the INA.

[1] INA §208; 8 U.S.C. §1158.

[2] The overseas counterpart to asylum processing is refugee processing. For a full discussion of refugee admissions, see CRS Report RL31269, *Refugee Admissions and Resettlement Policy*, by Andorra Bruno.

All foreign nationals seeking asylum are subject to multiple background checks in the terrorist, immigration, and law enforcement databases. Those who enter the country legally on nonimmigrant visas are screened by the consular officers at the Department of State when they apply for a visa, and all foreign nationals are inspected by Customs and Border Protection (CBP) officers at ports of entry.[3] Those who enter the country illegally are screened by the U.S. Border Patrol or the Immigration and Customs Enforcement (ICE) agents when they are apprehended.[4] When aliens formally request asylum, they are fingerprinted and are subject to a full background check by the Department of Homeland Security (DHS) and Federal Bureau of Investigation (FBI) databases.[5]

Overview of Current Policy

Foreign nationals present in the United States may apply for asylum with the United States Citizenship and Immigration Services Bureau (USCIS) in DHS after arrival into the country, or may seek asylum before the Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR) during removal proceedings.[6] Aliens apprehended along the border or arriving at a U.S. port who lack proper immigration documents or who engage in fraud or misrepresentation are placed in expedited removal; however, if they express a fear of persecution, they receive a "credible fear" hearing with an USCIS asylum officer and—if found credible—are referred to an EOIR immigration judge for a hearing.[7]

Affirmative Applications

An asylum seeker who is in the United States and not involved in any removal proceedings may apply for asylum by filing an I-589 asylum application form with the USCIS. The USCIS asylum officers make their determinations regarding the affirmative applications based upon the application form, the information received during the interview, and other potential information related to the specific case (e.g., information about country conditions). If the asylum officer approves the application and the alien passes the identification and background checks, then the alien is granted asylum status. The asylum officer does not technically deny asylum claims; rather, the asylum applications of aliens who are not granted asylum by the asylum officer are referred to EOIR immigration judges for formal proceedings.

Defensive Applications

Defensive applications for asylum are raised when an alien is in removal proceedings and asserts a claim for asylum as a defense to his/her removal. EOIR's immigration judges and the Board of Immigration Appeals (BIA), entities in DOJ separate from the USCIS, have exclusive control over such claims and are

[3] For more information and analysis of alien screening and background checks, see CRS Report RL32564, *Immigration: Terrorist Grounds for Exclusion of Aliens*, by Michael John Garcia and Ruth Ellen Wasem; and CRS Report R41104, *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends*, by Ruth Ellen Wasem.

[4] CRS Report RL32562, *Border Security: The Role of the U.S. Border Patrol*, by Marc R. Rosenblum.

[5] For more information, see U.S. Citizenship and Immigration Services, *Affirmative Asylum Procedures Manual*, February 2003, pp. 93-144.

[6] CRS Report R41753, *Asylum and "Credible Fear" Issues in U.S. Immigration Policy*, by Ruth Ellen Wasem.

[7] Distinct from asylum law and policy, aliens claiming relief from removal due to torture may be treated separately under regulations implementing the United Nations Convention Against Torture. For a full legal analysis of the this convention, see CRS Report RL32276, *The U.N. Convention Against Torture: Overview of U.S. Implementation Policy Concerning the Removal of Aliens*, by Michael John Garcia.

under the authority of the Attorney General. Generally, the alien raises the issue of asylum during the beginning of the removal process. The matter is then litigated in immigration court, using formal procedures such as the presentation of evidence and direct and cross examination. If the alien fails to raise the issue at the beginning of the process, the claim for asylum may be raised only after a successful motion to reopen is filed with the court. The immigration judge's ultimate decision regarding both the applicant/alien's removal and asylum application is appealable to the BIA.

Expedited Removal

Under the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (IIRIRA, P.L. 104-208), DHS immigration officers must summarily exclude a foreign national arriving without proper documentation, unless the alien expresses a fear of persecution if repatriated.[8] Absent a stated fear, the Customs and Border Protection officer is allowed to exclude aliens without proper documentation from the United States without placing them in removal proceedings.[9] This procedure is known as expedited removal.[10] According to DHS immigration policy and procedures, CBP inspectors, as well as other DHS immigration officers, are required to ask each individual who may be subject to expedited removal the following series of "protection questions" to identify anyone who is afraid of return to their home country:

- Why did you leave your home country or country of last residence?
- Do you have any fear or concern about being returned to your home country or being removed from the United States?
- Would you be harmed if you were returned to your home country or country of last residence?
- Do you have any questions or is there anything else you would like to add?

If the foreign national expresses a fear of return, the alien is supposed to be detained by Immigration and Customs Enforcement (ICE) and interviewed by a USCIS asylum officer. The asylum officer then makes the "credible fear" determination of the alien's claim (also see "Standards for Asylum"). Those found to have a "credible fear" are referred to an EOIR immigration judge, which places the asylum seeker on the defensive path to asylum. If the USCIS asylum officer finds that an alien does not have a credible fear, the alien may request that an EOIR immigration judge review that finding.[11]

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[8] CBP inspectors at ports of entry, U.S. Border Patrol agents, and Immigration and Customs Enforcement (ICE) officers may place foreign nationals in expedited removal if the INA §235(b)(1)(A) applies in that situation. Foreign nationals arriving at a port of entry who have **valid** immigration documents may request asylum upon entry and are permitted to use the affirmative asylum process.

[9] Executive Office for Immigration Review, *Asylum and Withholding of Removal Relief*, U.S. Department of Justice, Fact Sheet, January 15, 2009, http://www.justice.gov/eoir/press/09/AsylumWithholdingCATProtections.pdf.

[10] CRS Report RL33109, *Immigration Policy on Expedited Removal of Aliens*, by Alison Siskin and Ruth Ellen Wasem.

[11] The immigration judge's credible fear review must be done within 24 hours whenever possible, but no later than seven days after the initial determination by an asylum officer, and is limited strictly to whether an alien has a credible fear of persecution or torture. Executive Office for Immigration Review, *Asylum and Withholding of Removal Relief*, U.S. Department of Justice, Fact Sheet, January 15, 2009.

Standards for Asylum

Because "fear" is a subjective state-of-mind, assessing the merits of an asylum case rests in large part on the credibility of the claim and the likelihood that persecution would occur if the alien is returned home. Two concepts—"credible fear" and "well-founded fear"—are fundamental to establishing the standards for asylum. The matter of "mixed motives" for persecuting the alien is also an important concept.

Credible Fear

The INA states that "the term *credible fear of persecution* means that there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under §208."[12] Integral to expedited removal, the credible fear concept also functions as a pre-screening standard that is broader—and the burden of proof easier to meet—than the well-founded fear of persecution standard required to obtain asylum.

Well-Founded Fear

The standards for "well-founded fear" have evolved over the years and been guided significantly by judicial decisions, included a notable U.S. Supreme Court case.[13] The regulations specify that an asylum seeker has a well-founded fear of persecution if:

> (A) The applicant has a fear of persecution in his or her country of nationality or, if stateless, in his or her country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion;
>
> (B) There is a reasonable possibility of suffering such persecution if he or she were to return to that country; and
>
> (C) He or she is unable or unwilling to return to, or avail himself or herself of the protection of, that country because of such fear.[14]

The regulations also state that an asylum seeker "does not have a well-founded fear of persecution if the applicant could avoid persecution by relocating to another part of the applicant's country...."[15]

In evaluating whether the asylum seeker has sustained the burden of proving that he or she has a well-founded fear of persecution, the regulations state that the asylum officer or immigration judge shall not require the alien to provide evidence that there is a reasonable possibility he or she would be singled out individually for persecution if:

> (A) The applicant establishes that there is a pattern or practice in his or her country of nationality or, if stateless, in his or her country of last habitual residence, of persecution of a group of persons similarly

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[12] INA §235(b)(1)(B)(v); 8 U.S.C. §1225.

[13] *INS v. Cardoza-Fonseca*, 480 U.S. 421 (No. 85-782, Mar. 9, 1987).

[14] 8 C.F.R. §208.13(b)(2).

[15] Ibid.

situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(B) The applicant establishes his or her own inclusion in, and identification with, such group of persons such that his or her fear of persecution upon return is reasonable.[16]

Mixed Motives

The intent of the persecutor is also subjective and may stem from multiple motives. The courts have ruled that the persecution may have more than one motive, and so long as one motive is one of the statutorily enumerated grounds, the requirements have been satisfied.[17] A 1997 BIA decision concluded "an applicant for asylum need not show conclusively why persecution occurred in the past or is likely to occur in the future, [but must] produce evidence from which it is reasonable to believe that the harm was motivated, at least in part, by an actual or imputed protected ground."[18] Generally, the asylum seeker must demonstrate in mixed motive cases that—even though his/her persecutors were motivated for a non-cognizable reason (e.g., the police's desire to obtain information regarding terrorist activities in the Sikh cases)—the persecutors were also motivated by the asylum seeker's race, religion, nationality, social group, or political opinion.[19] The REAL ID Act established that the asylum seeker's race, religion, nationality, social group, or political opinion must be one of the central motives for the persecution.

Legislative History

In 1968, the United States became party to the 1967 United Nations Protocol Relating to the Status of Refugees (hereafter referred to as the U.N. Refugee Protocol), agreeing to the international legal principle of *nonrefoulement*. *Nonrefoulement* means that an alien will not be returned to a country where his life or freedom would be threatened, and it is embodied in several provisions of U.S. immigration law.[20] The U.N. Refugee Protocol does not require that a signatory accept refugees, but it does ensure that signatory nations afford certain rights and protections to aliens who meet the definition of refugee. At the time the United States signed the U.N. Refugee Protocol, Congress and the Administration determined that there was no need to amend the INA, assuming that the provisions to withhold deportation—then §243(h) of the INA—would be adequate.[21] In 1974, the former Immigration and Naturalization Service (INS) issued its first asylum regulations as part of 8 C.F.R. §108.[22] Prior to the passage of the Refugee Act of 1980, there was no direct mechanism in the INA for aliens granted asylum to become legal permanent residents (LPRs).

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[16] 8 C.F.R. §208.13(b)(2)

[17] *Harpinder Singh v. Ilchert*, 63 F.3d 1501 (9th Cir. 1995).

[18] Matter of T-M-B-, 21 I. & N. Dec. 775, 777 (B.I.A. 1997).

[19] *Harpinder Singh v. Ilchert*, 63 F.3d 1501 (9th Cir. 1995).

[20] §208 of INA (8 U.S.C. §1158); §241(b)(3) of INA (8 U.S.C. §1231); and §101(a) of INA (8 U.S.C. §1101(a)(42)).

[21] Now known as withholding of removal, it prohibits an alien's removal to the country where his or her life or freedom would be threatened, but it allows removal to a third country where his or her life or freedom would not be threatened. The law states that aliens must establish that it is more likely than not that their life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion in the proposed country of removal. INA §241(b)(3).

[22] CFR 8, §108.

Refugee Act of 1980

The Refugee Act of 1980 codified the U.N. Refugee Protocol's definition of a refugee in the INA, included provisions for asylum (§208 of INA), and instructed the Attorney General to establish uniform procedures for the treatment of asylum claims of aliens within the United States. Under the INA, a refugee is defined as an alien "displaced abroad who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."[23] The law defined asylees as aliens in the United States or at a port of entry who meet the definition of a refugee. For the first time, the Refugee Act added statutory provisions to INA that enabled those granted refugee and asylee status to become LPRs after certain general requirements were met.[24]

The 1980 law specified that up to 5,000 of the refugee admissions numbers, which are set annually by Presidential Determination in consultation with Congress, could be used by the Attorney General to give LPR status to aliens who had received asylum (and their spouses and children), and who have been physically present in the United States for one year after receiving asylum, continue to meet the definition of a refugee, are not firmly resettled in another country, and are otherwise admissible as immigrants. It appears that Congress and the Administration assumed at the time that the 5,000 ceiling would be more than adequate.[25]

Immigration Act of 1990

By 1986, the number of aliens receiving asylum annually was growing, and a backlog in obtaining LPR status developed due to the 5,000 ceiling. Compounding the frustration with the backlog was the worry of many asylees from Eastern Europe—as a result of the improved political and human rights conditions in their native countries—that they no longer would qualify as refugees under the law. Meanwhile, the number of aliens filing asylum claims surpassed 100,000 in 1989.

The Immigration Act of 1990 sought, among other major immigration reforms, to address the backlogs in asylee adjustments to LPR status. Foremost, it doubled the annual limit from 5,000 to 10,000 LPR adjustments. It also allowed those asylees who had filed for LPR adjustments before June 1, 1990, to do so outside of the numerical limits, effectively clearing out the existing backlog. The Immigration Act of 1990 further granted LPR status to those asylees who had qualified for LPR status as of November 29, 1990, but were unable to obtain it because of the prior numerical limits and improved country conditions. The crumbling of communism in Eastern Europe and the Arias Peace talks in Central America gave optimism to many that the number of asylum seekers would lessen in the future.[26]

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[23] §101(a)(42) of INA; 8 U.S.C. §1101.

[24] For a full discussion of U.S. refugee admissions and policy, see CRS Report RL31269, *Refugee Admissions and Resettlement Policy*, by Andorra Bruno.

[25] Later that same year, the Mariel boatlift brought approximately 125,000 Cubans and 30,000 Haitians to U.S. shores, and most of these asylum seekers ultimately became LPRs through special laws enacted for Cubans and Haitians.

[26] In Feb. 1987, the Presidents of El Salvador, Honduras, and Guatemala signed a 10-point peace plan for Central America that was first offered by Costa Rican President Oscar Arias. Nicaragua joined the peace process later that same year.

1996 Revisions to Asylum Policy

Prior to 1996, aliens arriving at a port of entry to the United States without proper immigration documents were eligible for a hearing before an immigration judge to determine whether the aliens were admissible. Aliens lacking proper documents could request asylum in the United States at that time. If the alien received an unfavorable decision from the immigration judge, he or she also could seek administrative and judicial review of the case.

Critics of this policy argued that illegal aliens were arriving without proper documents, filing frivolous asylum claims, and obtaining work authorizations while their asylum cases stalled in lengthy backlogs. In the late 1980s and early 1990s, the mass exodus of thousands of asylum seekers from Central America, Cuba, and Haiti prompted further concerns that the then-current policy was unwieldy and prone to abuses because it provided for multiple levels of hearings, reviews, and appeals. The 1993 bombing of the World Trade Center heightened fears that international terrorists might enter the United States with false documents, file bogus asylum claims, and disappear into the population.

Supporters of the then-current system asserted that the regulatory reforms begun by the first Bush Administration and expanded by the Clinton Administration had already corrected the bureaucratic problems that had plagued the asylum process. They emphasized that the United States was a signatory to the UN Refugee Protocol and that INA codified the internationally-held legal principle of *nonrefoulement* (i.e., that an alien would not be forced to return to a country where his life or freedom would be threatened). They also pointed out that aliens considered to be terrorists were already excluded by law from entering the United States. Proponents argued that aliens fleeing the most dangerous situations were likely to escape with fraudulent documents to hide their identity, and maintained therefore that even aliens lacking proper documents should be entitled to a full hearing and judicial review to determine if they might be admissible.

The Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (IIRIRA, P.L. 104-208) made substantial changes to the asylum process: establishing expedited removal proceedings; codifying many regulatory changes; adding time limits on filing claims; and limiting judicial review in certain circumstances, but it did not alter the numerical limits on asylee adjustments.

- **Expedited Removal**. Among the significant modifications of the INA made by the IIRIRA are the provisions that created the expedited removal policy.[27] The goal of these provisions was to target the perceived abuses of the asylum process by restricting the hearing, review, and appeal process for aliens at the port of entry. As a result, if an immigration officer determines that an alien arriving without proper documentation does not intend to apply for asylum or does not fear persecution, the immigration officer can deny admission and order the alien summarily removed from the United States. The amendments to INA made by IIRIRA provide very limited circumstances for administrative and judicial review of those aliens who are summarily excluded (including those who are deemed not to have a "credible fear" as discussed above).[28]
- **Mandatory Detention**. Foreign nationals arriving without proper documents who express to the immigration officer a fear of being returned home must be kept in

[27] The IIRIRA provisions amended §235 of INA.

[28] For a full discussion, see CRS Report RL33109, *Immigration Policy on Expedited Removal of Aliens*, by Alison Siskin and Ruth Ellen Wasem.

detention while their "credible fear" cases are pending.[29] If an asylum officer determines that an alien does not have a "credible fear" of persecution, the alien is removed. If the asylum seeker meets the "credible fear" threshold, they may be released on their own recognizance while an immigration judge considers the case.

- **Deadlines**. Another important change IIRIRA made to the asylum process is the requirement that all applicants must file their asylum applications within one year of their arrival to the United States.[30] Aliens may be exempted from this time requirement if they can show that changed conditions materially affect their eligibility for asylum, or they can present extraordinary circumstances concerning the delay in their application filing.[31]
- **Safe Third Country**. IIRIRA amended INA to bar asylum to those aliens who can be returned to a "safe-third country." This provision was aimed at aliens who travel through countries that are signatories to the U.N. Refugee Protocol (or otherwise provide relief from deportation for refugees) to request asylum in the United States. In order to return a potential applicant to a safe-third country, the United States must have an existing agreement with that country.[32]
- **Employment Authorization**. IIRIRA codified many regulatory revisions of the asylum process that the former George H.W. Bush and William J. Clinton Administrations made. Most notably, aliens are statutorily prohibited from immediately receiving work authorization at the same time as the filing of their asylum application. Now the asylum applicant is required to wait 150 days after the USCIS receives his/her complete asylum application before applying for work authorization.[33] The USCIS then has 30 days to grant or deny the request.
- **Coercive Family Planning**. IIRIRA also added a provision that enabled refugees or asylees to request asylum on the basis of persecution resulting from resistance to coercive population control policies, but the number of aliens eligible to receive asylum under this provision was limited to 1,000 each year.[34]
- **Other Limitations**. An additional restriction on the filing of asylum applications includes a bar against those who have been denied asylum in the past, unless changed circumstances materially affect their eligibility.[35] The reforms also established serious consequences for aliens who file frivolous asylum applications. For example, the Attorney General was given the authority to permanently bar an alien from receiving any

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[29] For background and analysis on detention policy under the Immigration and Nationality Act, see CRS Report RL32369, *Immigration-Related Detention: Current Legislative Issues*, by Alison Siskin.

[30] INA §208(a)(2)(B).

[31] See 8 C.F.R. §208.4(a)(4) and (5).

[32] INA §208(a)(2)(A) and (C). The first agreement was signed with Canada in 2002.

[33] 8 C.F.R. §208.7.

[34] This coercive family planning provision was added by §601. It states:

> For purposes of determinations under this Act, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.

[35] INA §208(a)(2)(A) and (C).

benefits under the INA if he determines that they have knowingly filed a frivolous asylum application.[36]

The Real ID Act

During the 109th Congress, several asylum provisions that were considered but dropped during the debate on the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) were included in the REAL ID Act of 2005 (P.L. 109-13, Division B).[37] Among the REAL ID Act's most significant revisions to the INA's asylum provisions were that it:

- established expressed standards of proof for asylum seekers, including that the applicant's race, religion, nationality, social group, or political opinion was or will be ***one of the central motives*** for his or her persecution;
- required that the asylum seeker provide evidence which corroborates otherwise credible testimony, such evidence must be provided, **unless the applicant cannot reasonably obtain the evidence**; and
- eliminated the 10,000 numerical limit on asylee adjustments and the 1,000 cap on asylum based on persecution resulting from coercive population control policies.[38]

Statistical Analysis of Asylum Trends

An analysis of the trends in requests for asylum and the patterns by sending countries may shed light on the question of whether asylum abuse is overwhelming our borders. Requests for asylum – both USCIS affirmative and EOIR defensive – have dropped since the mid-1990s, as **Figure 1** depicts.[39] There was an uptick in the early 2000s, but the decreasing trend overall continued until 2009. There has been a slight increase since 2010, but the numbers have not yet reached the levels of the early 2000s. EOIR cases include unapproved asylum cases that USCIS has referred to them as well as the credible fear claims made during expedited removal, so these data are not additive.

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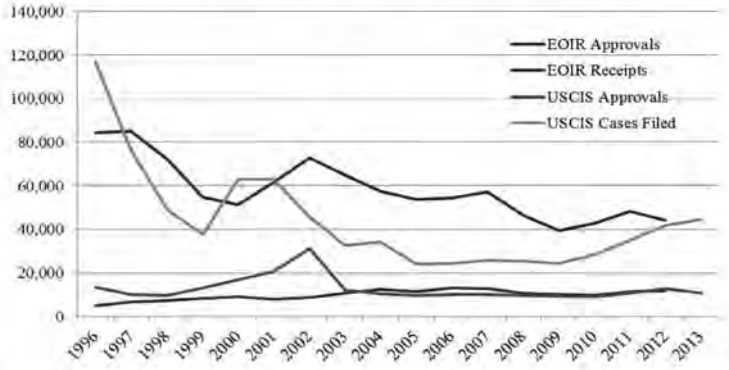
[36] INA §208(d)(6).

[37] CRS Report RL32621, *U.S. Immigration Policy on Asylum Seekers*, by Ruth Ellen Wasem.

[38] U.S. House of Representatives, *Conference Report on H.R. 1268*, H.Rept. 109-72, May 3, 2005.

[39] It remains difficult to assess the extent to which the IIRIRA revisions to asylum policy affected this decline.

Figure 1. Asylum Requests and Approvals
FY1996-FY2013



Source: CRS presentation of unpublished data from USCIS Refugees, Asylum and Parole System and of data from the EOIR Office of Planning, Analysis and Technology.

Note: There are FY2013 data for USCIS, but not for EOIR.

As **Figure 1** also presents, the number of asylum cases approved has remained rather steady since FY1996, with the notable exception of an increase of USCIS affirmative approvals in FY2001 and FY2002. In those years, the number of affirmative cases approved exceeded 20,000 and reached 20,651 in FY2000 and 31,202 in FY2001. Otherwise, the number of affirmative cases approved by USCIS is comparable in size to the number of defensive case approved by EOIR.

Top Countries

Country conditions lie at the core of the principle that the United States will not return a foreign national to a country where his life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion. As discussed more fully above, individualized persecution or persecution resulting from group identity may form the basis of the asylum claim. In the individualized instance, if the asylum seeker demonstrates that there is a reasonable possibility of suffering such persecution as an individual if he or she were to return to that country; and he or she is unable or unwilling to return to, or avail himself or herself of the protection of, that country because of such fear; then the fear of persecution is deemed reasonable. In the group identity instance, if the asylum seeker establishes that there is a pattern or practice in his or her home country of persecution of a group of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and establishes his or her own inclusion in, and identification with such group of persons; then the fear of persecution is deemed reasonable.[40]

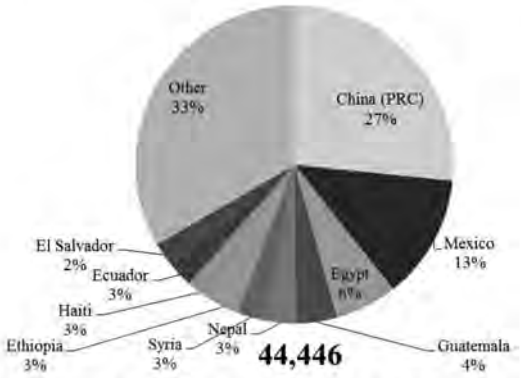
[40] 8 C.F.R. §208.13(b)(2)

For many years, most foreign nationals who sought asylum in the United States were from the Western Hemisphere, notably Central America and the Caribbean. From October 1981 through March 1991, for example, Salvadoran and Nicaraguan asylum applicants totaled over 252,000 and made up half of all foreign nationals who applied for asylum with the INS.[41] In FY1995, more than three-fourths of asylum cases filed annually came from the Western Hemisphere.[42]

In FY1999, the People's Republic of China (PRC) moved to the top of the source countries for asylum claims. As the overall number of asylum seekers fell in the late 1990s, the shrinking numbers from Central America contributed to the decline. Simultaneously, the number of asylum seekers from the PRC began rising and reached 10,522 affirmative cases in FY2002. The PRC remained the leading source country throughout the 2000s.

As **Figure 2** shows, the PRC was the top source country in FY2013, making up 27% of all 44,446 affirmative asylum requests. Mexico followed with 13%. The defensive asylum cases filed with EOIR exhibited a very similar pattern in FY2012 (FY2013 data are not available.). The PRC leads with 25% and Mexico follows with 21%, as **Figure 3** shows.

Figure 2. Affirmative Asylum Requests for Top Ten Countries
FY2013



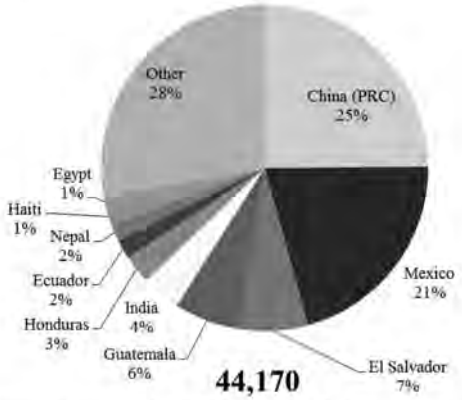
Source: CRS presentation of unpublished data from USCIS Refugees, Asylum and Parole.

[41] CRS Report 93-233, *Asylum Seekers: Haitians In Comparative Context*, by Ruth Ellen Wasem, (Archived, available on request).

[42] CRS Report 94-314, *Asylum Facts And Issues*, by Ruth Ellen Wasem, (Archived, available on request).

Figure 3. Defensive Asylum Requests for Top Ten Countries

FY2012



Source: CRS presentation of data from the EOIR Office of Planning, Analysis and Technology.

Note: EOIR cases include unapproved asylum cases that USCIS has referred to them as well as the credible fear claims made during expedited removal.

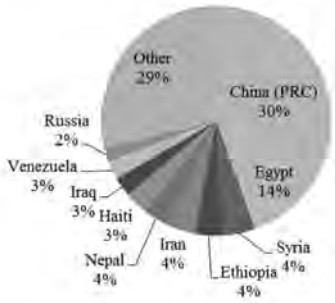
Six of the top ten source countries for defensive asylum seekers and five of the top ten source countries for affirmative asylum seekers were from the Western Hemisphere. Middle Eastern and South Asian nations also appear among the top countries. Nepal and Egypt were in the top ten of affirmative cases, and India and Egypt were among the top ten of defensive cases.

Given the sheer number of asylum seekers from the PRC, it is not particularly surprising that the PRC led in the number of asylum cases approved by USCIS and EOIR (**Figure 4 and 5**). Moreover, abuse of human rights in the PRC has been a principal area of concern in the United States for many years.[43] Arguably, PRC asylum seekers were also benefiting from the provision enabling aliens to claim asylum on the basis of persecution resulting from resistance to coercive population control policies, given the well-known population control policies of the PRC.

Notably, Western Hemisphere countries make up a smaller proportion of the asylum cases approved by either EOIR or USCIS than their portion of claimants.

[43] CRS Report RL34729, *Human Rights in China: Trends and Policy Implications*, by Thomas Lum and Hannah Fischer.

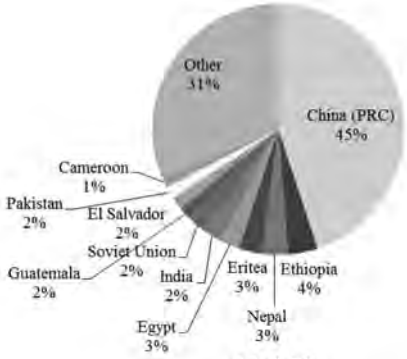
Figure 4. Affirmative Asylum Cases Approved for Top Ten Countries
FY2013



10,981

Source: CRS presentation of unpublished data from USCIS Refugees, Asylum and Parole System.

Figure 5. Defensive Asylum Cases Approved for Top Ten Countries
FY2012



11,978

Source: CRS presentation of data from the EOIR Office of Planning, Analysis and Technology.

Credible Fear Trends

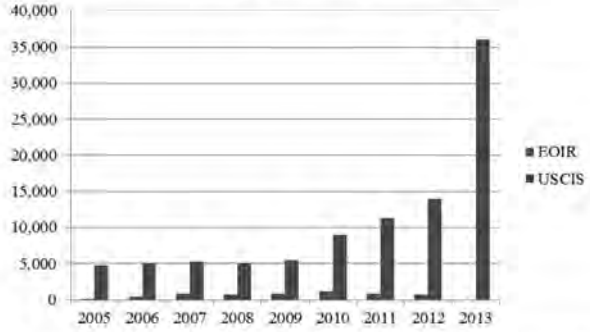
As evident in **Figure 6**, "credible fear" claims have been much smaller in overall numbers than the affirmative and defensive asylum caseloads.[44] As stated above, those that USCIS determines have a "credible fear" are referred to an EOIR immigration judge for a full hearing on their asylum claim. Foreign nationals whom the asylum officer find not to have a credible fear of persecution may request a review by an immigration judge.[45] These later requests are depicted as the EOIR credible fear review cases in **Figure 6,** which are only available through FY2012. The EOIR data presented in **Figure 6** are those requesting a review after USCIS deemed them not to have a credible fear.

As **Figure 6** indicates, FY2013 has seen a surge in credible fear claims made during expedited removal. The credible fear data were only available for FY2005 forward, so it is not possible to analyze longer term trends. In FY2013, the number reached 36,026, more than doubling from 13,931 in FY2012. This trend warrants further analysis.

As **Figure 7** reveals, a handful of countries were leading this increase: El Salvador, Guatemala, Honduras, and to a lesser extent Mexico, India, and Ecuador. All but India are Western Hemisphere nations. El Salvador, Guatemala, and Honduras have histories of sending significant numbers of asylum seekers to the United States in the past. Unfortunately, country-specific data on expedited removal prior to FY2010 was not available at this time.

Figure 6. Credible Fear Claims during Expedited Removal

FY2005-FY2013



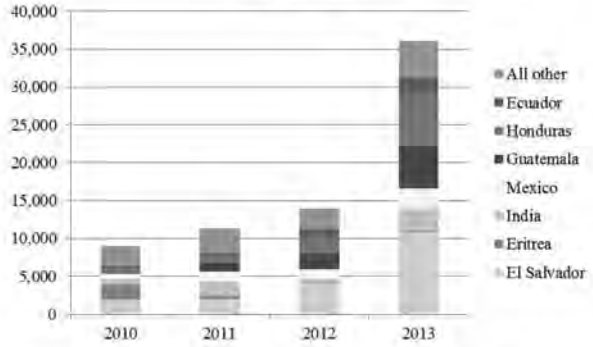
Source: CRS presentation of unpublished data from USCIS Refugees, Asylum and Parole System and of data from the EOIR Office of Planning, Analysis and Technology.

Notes: There are FY2013 data for USCIS, but not for EOIR. EOIR data presented are those requesting a review after USCIS deemed them not to have a credible fear.

[44] Those credible fear claims approved by USCIS become defensive asylum requests in the EOIR data and are not differentiated from other defensive asylum requests in the EOIR data.

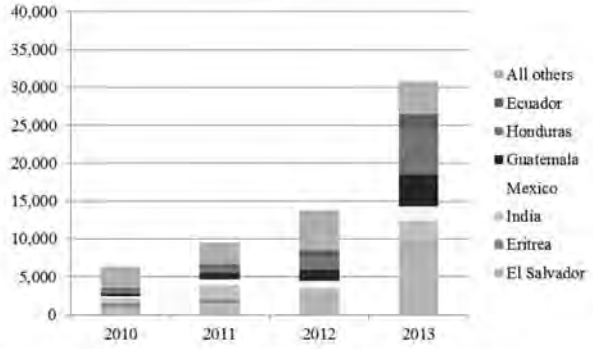
[45] If the judge determines there is "credible fear," the judge will vacate the DHS order of expedited removal, and the alien will be placed in removal proceedings.

Figure 7. Countries with at least 1,000 Credible Fear Requests
FY2010-FY2013



Source: CRS presentation of unpublished data from USCIS Refugees, Asylum and Parole System.

Figure 8. Number of Cases with Credible Fear Found for Countries with at least 1,000 Credible Fear Requests, FY201-FY2013



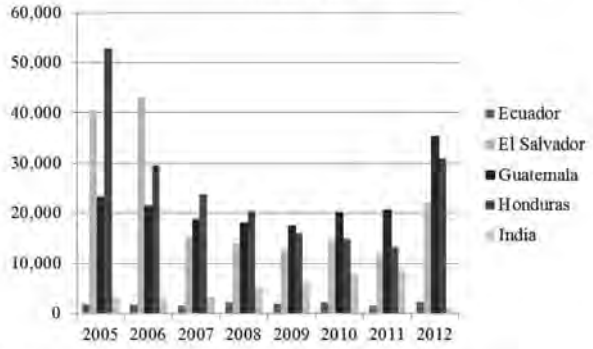
Source: CRS presentation of unpublished data from USCIS Refugees, Asylum and Parole System.

The trend in cases where credible fear has been found, depicted in **Figure 8**, was comparable to those in **Figure 7**. The overall percentage of credible-fear found was 73% in FY2010, 82% in FY2011, 80% in

FY2012, and 85% in FY2013.[46] Thus, the percent of cases in which fear was found has not increased as fast as the sheer number of people claiming a credible fear.

Figure 9 presents the apprehensions between ports and exclusions at ports for El Salvador, Guatemala, Honduras, India, and Ecuador to explore whether the increased credible fear claims are a function of increased inflows from these countries.[47] Exclusions at ports of entry were not available for FY2012, so that year's data is understated. As **Figure 9** indicates, apprehensions and exclusions from the five countries depicted in the figure all have increase substantially since 2009 (i.e., during the period in which credible fear claims have increased), though Honduran and Salvadoran levels remain below those observed in 2005. (Note that while the majority of people from the Western Hemisphere depicted in **Figure 9** were apprehended between ports of entry, most Indians were excluded at ports of entry, so it is likely that the FY2012 missing data has a particular impact on the Indian case.) The larger apprehensions in FY2005-FY2006 were associated with many fewer credible fear claims overall than the post-FY2010 increase in apprehensions. This change in credible fear requests suggests that the latest increase may represent a different pattern in migration.

Figure 9. Apprehensions between Ports and Exclusions at Ports for Selected Countries
FY2005-FY2012



Source: CRS presentation of unpublished data from CBP Office of Legislative Affairs.

Note: FY2012 data do not include exclusions at ports of entry.

In conclusion, an increase in asylum or credible fear claims in and of itself does not signify an increase in the abuse of the asylum process any more than a reduction in asylum or credible fear claims signifies a reduction in the abuse of the asylum process. Arguably, the surge of asylum cases in the early 1990s strained the institutions charged with preserving the integrity of the asylum process and controlling the

[46] CRS calculations based upon data provided by USCIS Refugees, Asylum and Parole System.

[47] Mexico was excluded because the number of Mexican apprehensions would dominate the scale on the vertical axis. Eritrea was excluded because the total number of Eritreans apprehended and excluded for FY 2005-FY2012 was too small to depict.

border. It prompted the Administration and Congress to revise the law to adjust for these pressures. While the current levels of asylum and credible fear claims do not yet approach those of two decades ago, the question for today is whether they have risen to a level that might strain the system designed to both protect refugees and control our borders.

Mr. GOODLATTE. Thank you, Ms. Wasem.

We will now begin questioning. Mr. Ragsdale, this appears to be creating a sense of deja vu with regard to many of us. Under the Department of Homeland Security Secretary Chertoff, catch and release became notorious. This was the name of the DHS practice of apprehending non-Mexican aliens along the southern border, giving them a notice to appear in immigration court, and releasing them into the United States.

Secretary Chertoff complained that, "When a non-Mexican is caught trying to enter the U.S. across the Southwest border today, he has an 80 percent chance of being released immediately because we have nowhere to hold him. Of course, he will be charged as an immigration law violator, and he will likely fail to appear at his immigration hearings."

Chertoff then announced a plan to end catch and release once and for all. He stated that, "When a large number of Brazilians began illegally crossing the Southwest border, we responded in July 2005 with 'Operation Texas Hold 'Em.' We prioritized the existing space, dedicated bed space, and began detaining and removing all of the illegal Brazilians we apprehended.

"The word spread surprisingly swiftly. Within the first 30 days, the operation had already begun to deter illegal border crossings by Brazilians. In fact, the number of Brazilians apprehended dropped by 50 percent. After 60 days, the rate of Brazilian illegal immigration through this sector was down 90 percent, and it is still significantly depressed all across the border.

"In short, we learned that a concentrated effort of removal can actually discourage illegal entries by non-Mexicans on the Southwest border."

This seems to me to be the solution to the credible fear crisis. Why doesn't DHS simply utilize Secretary Chertoff's strategy, eliminate the incentive to make an abuse of credible fear claim, and end this growing problem?

Mr. RAGSDALE. Thank you for the opportunity to answer that question.

I was actually an attorney in Arizona during that—the Brazilian initiative, and I was part of the litigation strategy before the Executive Office for Immigration Review that worked successfully there. I was also detailed to the department in 2005 and '04 to work on the Secure Border Initiative team with the former Secretary and came up with that strategy.

Mr. GOODLATTE. It seems like it would be a good one. Why aren't we doing it now?

Mr. RAGSDALE. Well, we actually are doing it now. We're doing it actually in what I'd say is a very smart way. The difference that we see today is if you look at the ICE detention capacity, we are making smart decisions to detain criminal aliens first.

Mr. GOODLATTE. Sir, the problem is one not just of criminal aliens, but of people who are making false claims simply to enter the United States. And Secretary Chertoff did not make that distinction. They detained every Brazilian.

We just heard from Ms. Wasem that El Salvador, Guatemala, and Honduras have the highest numbers of these credible fear claims, and it would seem to me extremely appropriate to identify

people who are apprehended from those countries making credible fear claims, of detaining all of them so that there is not this problem. And word gets back to those countries, as it did back to Brazil, if you try this, it is not going to work.

That would be the thing that would drive down asylum claims, as it did. And now they are back up, as you can see, and growing rather rapidly because there is not an effective policy dealing with all people making credible fear claims.

Mr. RAGSDALE. Well, there is a balance here. We certainly understand that the use of expedited removal has allowed DHS to remove more people more quickly than immigration proceedings before an immigration judge, by far. So it is a very effective enforcement tool.

The balancing technique——

Mr. GOODLATTE. If that is the case, why is it that ICE has requested fewer beds for detention in 2012 and 2013 than they have previously?

Mr. RAGSDALE. Well, detention is only one piece of the puzzle. I think from what we've certainly heard from everybody's testimony today is a need to increase immigration court capacity, more officers to work the detention process, it is a wider approach than just detention.

Simply detaining someone with the same hearing capacity would lead to——

Mr. GOODLATTE. Well, we certainly agree there should be greater hearing capacity. But if you detain people from a particular country that is showing this rapid spike up, one of two things are going to happen. You are either going to find out that there is no uptick in the amount of—in the basis for credible fear claims. Or you are going to find out that there is something going on in that country that might justify that.

But by doing that, you are going to find out. If you simply release them into the interior of the country, as was occurring back then, it is occurring again today, most of them do not ever show up for their hearings.

Mr. RAGSDALE. Well, we are certainly working, from our chief counsel offices, with the Executive Office for Immigration Review to prioritize dockets. We are certainly doing everything we can to litigate those cases effectively before the Executive Office for Immigration Review. And when an immigration judge makes a decision and a removal order is entered, we are certainly making every effort to remove them.

The answer is simply here it is a blended approach. The Executive Office for Immigration Review is a big player here, and the other point I should make is once a credible fear is found and an NTA is issued, an immigration judge has jurisdiction to set bond in those cases. So even if an immigration officer at ICE sets a bond decision, an immigration judge may redetermine it.

Mr. GOODLATTE. My time has expired. I am going to ask you one more question. Currently, there is a 92 percent grant rate for credible fear cases. How many of these aliens are eventually granted asylum by an immigration judge, handled on the merits?

Mr. RAGSDALE. Well, again, Executive Office for Immigration Review are the right place to get that statistic. If you look at the——

Mr. GOODLATTE. All right. Let me ask you another one. Of those cases that were denied, how many are removed, and how many have absconded?

Mr. RAGSDALE. Again, the Executive Office for Immigration Review is——

Mr. GOODLATTE. If you don't have these numbers and you are making policy regarding whether or not you should detain people when they come in or release them, why don't you have those numbers? It would seem to be me to be of great interest to ICE to know what is happening down the line.

And I certainly understand that we can get those numbers from other places, but ICE should have those numbers and should be making their policy decisions on that basis. It would otherwise seem to be a key question in determining whether credible fear is becoming a superhighway of abuse.

Mr. RAGSDALE. Well, I'm aware of the numbers. What I would suggest to you is those are two different legal standards. The asylum standard, as we've heard, is a higher standard where the credible fear standard, because of the very powerful enforcement tool in expedited removal, is only a significant likelihood that a successful asylum claim could be made.

So ICE does not look behind a CIS adjudication on a credible fear. We take that decision and get the person in front of an immigration judge.

Mr. GOODLATTE. On a case-by-case basis, that, of course, is the appropriate thing to do. But in terms of looking at trends of abuse along our border, considering that it is ICE attorneys that handle the EOIR dockets, they should know, your agency should know, you should know, as someone engaged in formulating this policy, what is going on so that you can take appropriate measures to stop it.

That is not happening, and it is disturbing.

My time has expired. I will turn now to the Ranking Member, the gentleman from Michigan, for his opening question.

Mr. CONYERS. Thank you. I appreciate the witness' testimony.

I wanted to let our Committee know that we have three asylees that are present at the hearing. A refugee from Eritrea, Mr. Tesfatsion. A "Mr. E," so fearful of his relationships with his government in Ethiopia that he will not use his full name, spent 6 months in detention before he was released and granted asylum by an American——

Mr. GOODLATTE. The Chair would ask the Ranking Member to suspend for a moment. We have two individuals in the audience who are standing. There is no basis for doing so. Members of the audience must behave in an orderly fashion, or else they will be removed from the hearing room.

And that will serve as your warning that under Rule 11 of the House rules, the Chairman of the Committee may punish breaches of decorum and order by censure and exclusion from the hearing. I apologize to the gentleman for the interruption.

Mr. JOHNSON. Would the gentleman—point of order?

Mr. GOODLATTE. The gentleman will state his point of order.

Mr. JOHNSON. Do the rules prohibit a spectator from standing up as—and not saying anything, not making any gestures, no signs. Just standing up when they were recognized by a Member during

that Member's presentation? Is that a breach of decorum under the rules?

Mr. GOODLATTE. It is not if they are subsequently recognized by the Ranking Member.

The gentleman may proceed.

Mr. JOHNSON. Well, if I may, Mr. Chairman? Didn't the two gentlemen who stood, weren't they recognized?

Mr. GOODLATTE. We are about to find that out from the Ranking Member. And the gentleman may proceed.

Mr. JOHNSON. But it is okay. It is okay for them, if recognized by a Member here, to stand up?

Mr. GOODLATTE. For a brief time, that is correct.

Mr. JOHNSON. It would not be a breach of decorum?

Mr. GOODLATTE. The Ranking Member will proceed.

Mr. CONYERS. Thank you.

Mr. JOHNSON. Thank you.

Mr. CONYERS. Mr. Chairman, I hope this will not come out of my 5 minutes. I appreciate the gentleman greatly for that.

But I just wanted to mention them. There is nothing profound about them standing up or not. But I wanted to mention that they are here. Mr. Tesfatsion from Eritrea, and the Ethiopian refugee who can't use his full name, and I don't want him to stand up. Pedro from Equatorial Guinea. And I will put something about them—I ask unanimous consent to put a small statement about each of the three——

Mr. GOODLATTE. Without objection, they will be made a part of the record.

[The information referred to follows:]

Introduction to Asylees Present at the Hearing

We are pleased to have with us today several asylees who experienced first-hand the difficulty that legitimate asylum seekers face during expedited removal. Their stories illustrate the critical importance of the credible fear process to ensure that the United States protects those who face persecution and torture in their own countries.

- Fesseha Tesfatsion is a refugee from Eritrea. He fled his country because he was arrested, detained, and beaten for speaking out against the government's forced national service policies. He was found to have a credible fear of persecution but was detained in Texas for more than two months before being paroled. With the help of a pro bono attorney, he was granted asylum by an immigration judge. He now attends Northern Virginia Community College.

- Mr. E, who is too fearful of his government to use his full name here, is a refugee from Ethiopia. He was forced to flee his country after years of persecution and detention on account of his political opinion. He expressed his fear of return to Ethiopia when he arrived at a port of entry in Texas. He was subsequently detained and passed a credible fear interview. He spent 6 months in detention before he was released on parole, thanks to the assistance of a local nonprofit. After three years in the U.S. immigration system, was granted asylum by an immigration judge.

- Pedro is a refugee from Equatorial Guinea who fled persecution and torture for his political opposition to the government. He was detained upon arriving in the U.S., went through the credible fear process, and was released on parole after more than two months. He was granted asylum by an immigration judge with the assistance of a local nonprofit and is now living with his wife and two children in Washington, D.C.

Mr. CONYERS. And I thank the Chairman, and I thank my friend from Georgia as well.

I wanted to concentrate on the whole question of whether there are instances in which a person, Mr. Ragsdale, who demonstrated credible fear, established her identity and proved that she poses neither a danger to the community nor risk of flight would be granted parole conditioned on the posting of a bond.

Mr. RAGSDALE. First, I should probably clarify the policy that we are talking about from former Director Morton in 2009 applies only to what are called arriving aliens. So those are aliens that arrive at a port of entry and are considered for parole. Those folks would either be detained or could be paroled by an immigration officer.

Folks who arrive between a port of entry and are found to have a credible fear are considered for release under a different section of the Immigration and Nationality Act, and those folks could, in fact, be considered for a bond, both by ICE and by an immigration judge.

Mr. CONYERS. Thank you very much.

Are there people who remain in your custody after a grant of parole because they are unable to post such a bond?

Mr. RAGSDALE. If we've determined or an immigration judge has determined that a particular number of a bond is appropriate to guarantee appearance, you know, obviously, that is subject to the decision from either the judge or from the field office director.

Mr. CONYERS. Thank you.

And now, last, are you familiar with any cases of persons who established credible fear but were denied parole and were ultimately granted asylum after spending months in your custody?

Mr. RAGSDALE. Again, every case on detention is made on the individual facts.

Mr. CONYERS. Sure.

Mr. RAGSDALE. So there may be a case that ICE did detain someone while the process went on, and that may be totally appropriate. The decision to grant protection is—either rests with USCIS or an immigration judge, not with ICE.

Mr. CONYERS. All right. Dr. Wasem, we appreciate your being with us today. As you know, the bulk of the credible fear claims that were made in fiscal 2012 and 2013 were made by people from El Salvador, Honduras, and Guatemala. In your testimony, you looked at some of the apprehension and credible fear data pertaining to these people and suggest that the latest increase may represent a different pattern in migration.

Could you expand on that a bit?

Ms. WASEM. I'd be happy to, Ranking Member Conyers.

In the written testimony, I took a look at apprehensions as well to try to better tease out what is going on with this uptick. And I observed that in 2005, which is on the chart, there were very high apprehensions as well of individuals from Guatemala and El Salvador.

But we did not have the same level of credible fear requests then. And so, it—and then the patterns went down again, as Figure 9 in my testimony shows. So, clearly, something different is happening. I have subsequently also been able to take a look at some additional credible fear data by country in terms of the rate

of being approved or not approved, but passing that first credible fear——

Mr. CONYERS. What is that something different that may be happening?

Ms. WASEM. It could be—account for several things. The percentage of credible fear found for Salvadorans and Guatemalans and Hondurans has gone up since 2008. Even when you—when you just look at the percentage of people asking, there has been change in the number who are being passed on as in that review process.

So, earlier, a lower percentage of, say, Salvadorans, it was closer to 40 percent in 2008, were determined to meet a significant possibility. So that first level of review that USCIS is doing is showing a higher percentage. So something is going on. It could be in-country conditions. It could be things happening in Mexico. It could be our policy changes.

It could be a number of different things, but it's not—everything isn't moving in the same direction with the other patterns. There is some interactive effects——

Mr. CONYERS. Okay.

Ms. WASEM [continuing]. That warrant further analysis.

Mr. CONYERS. Thank you very much.

Director Ragsdale, a number of background and security checks must be completed before a credible fear interview can take place, of course, and I understand that many of those same checks are performed when ICE takes custody of the person and before the parole determination is made.

Can you describe some of these checks that might be revealed? And if ICE encounters information, what action does ICE typically take, and would you have to go to court to prevent a person who appeared to be a risk before you can keep them from getting out of your jurisdiction?

Mr. RAGSDALE. So we sort of come to this process sort of after both our partners in Customs and Border Protection and Citizenship and Immigration Services has run a lot of those same checks. Those are obviously criminal history checks. They are checks related to terrorism screening databases. They're based on biometrics. They're based on biographics. So we sit here with a very unified approach on how we do those record checks.

If someone came to a port of entry, and there was derogatory information, and they were an arriving alien, we would make the decision whether or not to keep that person in our custody. If the person is found to have a credible fear and has arrived between a port of entry, we would set an appropriate bond or no bond, and then that person would be able to seek redetermination from an immigration judge.

Mr. CONYERS. Now last question, sir. Director Scialabba, is there any circumstances under which you sometimes feel you can't get the information that you need, and what are your alternative recourses?

Ms. SCIALABBA. No, I wouldn't say there is any circumstances where we feel like we can't get information. We actually receive information from CBP, as well as ICE, when we're doing credible fear interviews. We also do the interview. So we're actually talking to the person that is in front of us, finding out what their story is,

whether they have any kind of history that may indicate there is any kind of criminal activity involved and those sorts of things.

No. I don't feel like we don't get the information we need. I think there may be circumstances sometimes where there may be an ongoing investigation somewhere, and that information has not yet been put into databases that we check.

And if that's the situation, then we don't really have access to that information unless one of our colleagues from CBP or ICE may have that information and provide that to us.

Mr. CONYERS. Thank you.

Thank you, Mr. Chairman.

Mr. GOODLATTE. The Chair recognizes the gentleman from North Carolina, Mr. Coble, for 5 minutes.

Mr. COBLE. Thank you, Mr. Chairman.

Good to have you witnesses with us today.

Ms. Scialabba, DHS indicated 97.8 percent of Indian claimants found—were found to have a credible fear of persecution. I am told that there is little political turmoil in India. Could this be irregular, or do you think those figures are correct?

Ms. SCIALABBA. Sir, I believe the figures are correct. Credible fear really is a screening process. They aren't all political persecution claims that are made. Sometimes they're related to particular social groups. It could be related to inheritance, caste issues that are in India. So they're not all political, but the percentage is correct.

Mr. COBLE. And I am furthermore told that part of the problems plaguing India now result from socioeconomic reforms. Could it be that many of the Indians are fleeing poverty in lieu of persecution?

Ms. SCIALABBA. It's possible—I mean, that is a possibility. The screening process that we do, the credible fear screening process has a fairly low standard. It's just a screening process to determine whether or not there's a significant probability that an immigration judge may find asylum.

When the person goes before the immigration judge, that's when really the full panoply of issues and the story that the person may have is actually determined, and at that point, we also have a nice trial attorney who will cross-examine the person and get more information other than what we do in terms of this credible fear screening.

Mr. COBLE. I thank you for that. Well, what sort of training do USCIS officers receive on country conditions?

Ms. SCIALABBA. Our officers have extensive training in terms of their initial training for asylum. They also have extensive training on credibility determinations.

For country conditions, our officers have 4 hours a week, where they are provided additional information. So if somebody is handling particular cases from a particular country, they will receive information on those country conditions. We also have access to the State Department documents on country conditions as well.

Mr. COBLE. I thank you for that.

Mr. Fisher, what do you think might be the reasons for the dramatic increase in applicants arriving at ports of entry, claiming credible fear, A? And B, how do you think DHS could best deal with this issue?

Mr. FISHER. Thank you for the question.

I think, first, those that are coming to the ports of entry and in between the ports of entry, for that matter, we need more information. We need more requests, specific requests for information during the initial encounters that CBP officers make at the port of entry, and Border Patrol agents make between the ports of entry to fill some of those intelligence gaps right now. Generally, what happens when the credible fear claim is made within our custody, we generally turn that over to ICE ERO and then on to CIS for their interview process.

So we have to be able to get more information to be real specific in terms of any potential vulnerabilities or the extent to which it may be exploited as it relates to our security risk.

Mr. COBLE. I thank you for that, Mr. Fisher. Let me ask you another question.

Does the spike in credible fear claims give rise to a particularized concern relating to our national security, and is it well documented that some of the illegal aliens arriving—let me get this question—arriving at our border and claiming credible fear or persecution or have been affiliated with criminal enterprises, such as drug cartels, in their home country?

What is being done to address these concerns?

Mr. FISHER. Thank you again for that question. Very insightful, sir.

I would tell you that generally when we see a spike in any activity, any anomaly, we first set the conditions that, one, it is, in fact, a risk at some level until proven otherwise. So we take that affirmative step.

And then, two, we work with the intelligence community, with our partners within law enforcement to make sure that we're gathering all available information. Not just those that are contained in the databases so much, but as mentioned on the panel, investigative files. We want to figure out who is pending investigations, who's open investigations with one of our partners, whether it's the FBI or the DEA.

And information is the key for us. The more we're able to get information about these illicit networks, the better we are to be able to assess risk.

Mr. COBLE. I thank you, Mr. Fisher.

Mr. Chairman, I see that my amber light appears. So I will yield back.

Mr. GOODLATTE. The Chair thanks the gentleman and recognizes the gentleman from Virginia, Mr. Scott, for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

Ms. Wasem, if someone files a claim, how do you know before you have heard it whether it is a bona fide claim or a fraudulent claim?

Ms. WASEM. If someone files a claim before you've heard it?

Mr. SCOTT. Right. You can't know. Is that right?

Ms. WASEM. That's—the credible fear standard, usually the final determination is when you go before a judge or an asylum officer, you have to provide evidence. This is some of the stuff that was in the REAL ID Act in 2005 was establishing what evidence is necessary to make that determination.

So the credible fear screening, if that's—is—is a first cut of whether you have a significant possibility of being eligible under asylum, but it's not a complete review of the process.

Mr. SCOTT. Now some people will win, and some people will lose. What portion of the claims that are lost are differences of opinion, and how many are outright fraud?

Ms. WASEM. I have no idea.

Mr. SCOTT. If you—I think you mentioned in the handful of the countries that are driving the numbers, the portion of the claims that are actually bona fide is high or low?

Ms. WASEM. Oh, let me be more clear in terms of particularly what I had said earlier with Ranking Member Conyers' question. First, you have there has been an increase in the first pass at credible fear reviews, and then they go to the immigration judges.

Mr. SCOTT. How long does that take?

Ms. WASEM. And the judges then make the final determination. They're——

Mr. SCOTT. How long does that—how long does that take?

Ms. WASEM. I'm sorry?

Mr. SCOTT. How long does that take?

Ms. WASEM. Oh, it varies from where you're at in the country and the system. But it can take some time to get a court date, and I think several people have mentioned the delays in getting a court date for that. But the individual, when they—what I've observed with the defensive cases, and this would be Figure 5 in my written testimony, is you can see there has been an increase in Salvadorans, Guatemalans, and Indians, for example, in getting actual approvals from the Executive Office immigration judges.

But it's still a very small percent. We're talking 2 percent of all the approvals are from these countries, which have begun to surge. And I expect we won't know for another year or two, as those cases work through, whether—in order to be able to even evaluate the credible fear review process.

Mr. SCOTT. What kind of evidence is presented? Is this an adversarial process where both sides are represented? Or does the person just——

Ms. WASEM. When you go before the judges, yes. The credible fear review is not.

Mr. SCOTT. Who is on the other side?

Ms. WASEM. In credible fear, it's the individuals from the USCIS asylum office. It's an asylum officer for credible fear. By the time you get before an immigration judge, it's a formal proceeding, and it's part of removal.

Mr. SCOTT. If you win before a judge, is that a permanent determination or for a specific time?

Ms. WASEM. If you are granted asylum, any grant of asylum, whether it's done by an immigration judge or by a USCIS asylum officer, puts you in a conditional status, and after a year, you can become a legal permanent resident of the United States.

Mr. SCOTT. Okay.

Ms. WASEM. So that final determination is a significant one.

Mr. SCOTT. I yield the balance of my time to the gentlelady from California.

Ms. LOFGREN. Thank you.

I—I have been crunching the numbers, and I think it is important that as we proceed that it be fact based, not anecdotally based. And taking a look, Mr. Ragsdale, at the numbers that we got prior to the hearing, I am correct, I believe, that the parole directive applies only to people who presented themselves at a port of entry. And it does not apply to the three-quarters of the people who are found to have credible fear after being apprehended by the Border Patrol between the ports of entry.

So when you take a look at the parole directive, it actually establishes an affirmative obligation on ICE to consider parole for all arriving aliens who demonstrate a credible fear of persecution or torture. That is correct, isn't it?

Mr. RAGSDALE. That is correct.

Ms. LOFGREN. So if you look at the data, it seems to me that in the year since the parole directive was implemented, ICE has only made parole determinations for maybe two-thirds of the people who were granted credible fear after arriving at a port of entry. And if you go through the data, and maybe we can do this after the hearing, it looks to me that from the data you have given us, that parole is granted in about 75 percent of the cases.

And since ICE may only be considering parole for two-thirds of the people eligible, the grant rate is actually closer to 50 percent. And since 75 percent of the people who claim credible fear are not even eligible for parole under the directive because they were apprehended by Border Patrol, the actual percentage of people found to have a credible fear who received a grant of parole is like 12 or 13 percent.

Mr. RAGSDALE. That's right. So I can just put that in a little bit larger context. Roughly, in the last year, we've had about 220,000 book-ins, we call them, from CBP. Only about 18,000 of those were from the ports of entry. Only about 6,000 of those are folks that have claimed credible fear.

So the number of folks compared to people apprehended between the ports of entry, as opposed to at the ports of entry, it is a fraction.

Ms. LOFGREN. Mr. Scott's time has expired. So I will get my own.

But I would like to ask unanimous consent to put the following statements into the record from the Center for Victims of Torture, the Evangelical Immigration Table, Human Rights First, Immigration Equality, Lutheran Immigration and Refugee Services, the Hebrew Immigrant Aid Society, the U.S. Commission on International Religious Freedom, the National Immigration Forum, the CAIR Coalition, the National Immigrant Justice Center, the American Immigration Lawyers Association, a letter signed by 118 national, State, and local organizations and 27 legal experts underscoring the importance of the asylum, the U.S. Conference of Catholic Bishops, and the United Nations High Commissioner for Refugees.

Mr. GOODLATTE. Without objection, they will be made a part of the record.

[The information referred to follows:]

Submission to the U.S. House of Representatives Committee on the Judiciary:
Asylum Abuse: Is it Overwhelming our Borders?
December 12, 2013

Introduction

The Center for Victims of Torture (CVT) is an international non-profit organization that provides rehabilitation services to survivors of torture and severe war atrocities. Since its founding in 1985, CVT has extended care to nearly 25,000 survivors at our healing sites in the United States and around the world. Many of CVT's clients at our clinic in St. Paul, MN are asylum seekers who came to the United States in search of protection and found themselves navigating a confusing labyrinth of complicated laws and legal procedures in an asylum adjudication process that takes months or years.

In November 2013, CVT in partnership with the Torture Abolition and Survivor Support Coalition and the Unitarian Universalist Service Committee released the report, "Tortured & Detained: Survivor Stories of U.S. Immigration Detention," focused on the personal and psychological aspects of the detention experience.[1] In researching that report, CVT staff interviewed individuals who survived various forms of severe trauma, including torture, fled their country of origin and arrived in the United States believing they had reached a destination of safety—only to find themselves arrested, shackled, and held in confinement for weeks, months and, in some rare cases, years.

As the House Committee on the Judiciary examines this important question of asylum seekers at the U.S. border, CVT offers a series of recommendations for steps Congress can take to improve efficiencies in the asylum adjudication process and make the system less vulnerable to fraud. These steps would improve the system overall, while helping those who have genuine asylum claims move more smoothly—and less traumatically– through the asylum process.

Survivors of Torture Seeking Asylum in the United States

As they flee for their lives, asylum seekers often carry the heavy weight of multiple and cumulative traumas. They have been forced to leave their homes, their communities, their families, their professions, and their culture. Many have been tortured or raped. Most are fleeing situations in which genocide, war, military dictatorships, organized violence, massacres, disappearances or other gross violations of human rights have occurred. Furthermore, their journey to the United States is often riddled with danger and uncertainty.

[1] http://www.cvt.org/sites/cvt.org/files/Report_TorturedAndDetained_Nov2013.pdf.

These traumatic experiences lead many asylum seekers, particularly those who have been subjected torture, to suffer from severe sleep disorders, chronic physical pain, anxiety, depression and suicidal ideation. CVT's clients regularly describe feeling haunted by intrusive memories, excessive rumination, nightmares, and repeated episodes of actively re-experiencing past traumas. In less than three years—from October 2010 to February 2013—CVT estimates the United States detained approximately 6,000 survivors of torture as they were seeking asylum protection.

As a party to the 1967 Protocol to the 1951 United Nations Convention Relating to the Status of Refugees and the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United States has committed itself to uphold the principle of *non-refoulement* and not return refugees to countries where their life or freedom would be threatened or where they are more likely than not to be tortured. The United States enshrined these principles into domestic law through the Refugee Act of 1980 and through incorporating CAT standards into Section 8 of the Code of Federal Regulations in 1999.[2]

Nevertheless, upon arrival in the United States, asylum seekers regularly report feeling shocked at being detained, particularly in the conditions in which they are held. At the short term facilities on the border managed by U.S. Customs and Border Protection, asylum seekers describe feeling intensely uncomfortable, being forced to endure painfully cold temperatures with authorities refusing to give them a blanket or extra clothes. They report feeling humiliated due in part to a lack of privacy in the small and crowded holding cells, creating a situation in which they must urinate or defecate in front of their cellmates. They describe an utter state of confusion as they undergo interviews by border officials—sometimes without an interpreter—and are forced to sign papers they do not understand, either due to a language barrier and lack of translation or to not knowing the law or legal process, or all of the above.

Throughout this time at the border—and later while in detention under the custody of U.S. Immigration and Customs Enforcement—asylum seekers continue to suffer from a profound lack of information and understanding of what is happening and why. For survivors of torture, these conditions and treatment can lead them to relive their experience of torture, as their subjective experience is being rendered powerless and, in some circumstances, forced to endure prolonged physical discomfort. The effect can lead to a deterioration of an asylum seeker's mental state, especially when combined with the indefinite nature of the situation: Whether someone is detained for 2 hours or 2 years, the subjective experience at any given time includes not knowing when or if it will ever end. The indefinite nature of this experience is a psychologically destructive blanket over it all.

For the asylum system to function well, credible fear interviews and an assessment of whether an asylum seeker who passes credible fear is eligible for release from detention should happen promptly. These prompt assessments and utilization of more cost-effective alternatives to detention can help prevent prolonged and unnecessary detention, reducing the hardship on the individual while saving valuable taxpayer dollars. Similarly, on a systematic level, providing detainees with access to legal information helps the immigration court process run more efficiently and reduces delays. For the individual, having access to basic information about the process—even if it does not change the process or the outcome—can serve to support resilience, help to avoid retraumatization and reduce anxiety.

[2] 8 C.F.R. § 1208.18 (1999).

Beyond detention, torture survivors regularly describe agony and dread associated with waiting extended periods of time before having their asylum cases heard in the immigration courts. Currently, asylum seekers are waiting an average of 560 days before having a merits hearing. During that time, they remain separated from family members. Their housing is often unstable or unsafe, making them vulnerable to exploitation, especially as they may not be legally allowed to work. Throughout this period of waiting, they live in constant fear of being returned to the country in which they were tortured. When a survivor of torture's life remains in this state of limbo, the trauma is ongoing and the instability may exacerbate symptoms of depression, anxiety or other conditions they may be suffering. CVT supports a congressional approach that would eliminate the backlogs in the immigration courts, reduce delays in asylum adjudications and allow asylum applicants to have their claims decided on their merits in a fair and efficient manner.

Recommendations

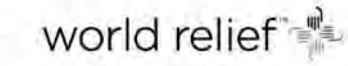
- ***Increase personnel in both U.S. Citizenship and Immigration Services (USCIS) and the Department of Justice/Executive Office for Immigration Review (EOIR).*** Properly staffing the adjudication functions of the U.S. immigration system is critically important to reducing the backlogs and driving down the overall costs of the immigration system, including by reducing detention time. More personnel in both the USCIS Asylum Division and the EOIR immigration courts will allow much quicker adjudication of asylum claims.

- ***Expand EOIR's Legal Orientation Program (LOP) nationwide.*** Detainees' lack of knowledge about immigration court proceedings often leads to delays in the adjudication of cases. Congress should increase LOP nationwide and mandate that it be made available to all immigrants in detention within five days of being taken into custody. LOP saves money by improving efficiencies in the immigration court and reducing costly detention time.

- ***Provide counsel for individuals in immigration proceedings.*** Not only does having counsel allow for the more fair adjudication of immigration cases, it also makes the process run more smoothly and helps prevent unnecessary delays in the immigration courts. Congress should consider mandating counsel for certain groups of individuals in immigration proceedings, especially vulnerable groups such as children, individuals with mental disabilities, and survivors of torture.

- ***Expand humane alternatives to detention and improve the custody determination processes.*** When physical detention is not necessary, but release is not an option, U.S. Immigration and Customs Enforcement (ICE) should have other, less expensive, less restrictive tools to utilize. Congress should establish alternative to detention programs nationwide that contract with community based organizations and offer case management to provide survivors of torture, and others enrolled in these programs, with the support they need to comply with all court and ICE requirements. Congress should enhance protections against arbitrary or prolonged detention by allowing all immigration detainees to have access to a custody review by an immigration judge.

Please contact Annie Sovcik, Director of the Washington Office at the Center for Victims of Torture, at 202/822-0188 or asovcik@cvt.org with any questions.



Statement in Support of Stronger Protections for Those Fleeing Persecution for the U.S. House of Representatives Committee on the Judiciary Hearing "Asylum Abuse: Is it Overwhelming our Borders?"

December 12th, 2013

The United States of America has a long and proud tradition of being a beacon of hope for victims of persecution around the world, providing safe haven to those in search of protection. Such tradition is enshrined in our asylum process and the refugee resettlement program, which are codified in the Refugee Act of 1980, which has afforded protection to thousands of bona fide asylum-seekers and refugees for over three decades.

Asylum-seekers who rebuild their lives in the United States do so in freedom and have contributed in countless ways to our country. Yet, the asylum system has become inefficient and uneven over the years, denying asylum claims and deporting individuals back to countries of persecution due to an arbitrary filing deadline, detaining bona fide asylum-seekers in jail-like facilities for months at a time without an opportunity for them to have their claims heard, and preventing those already granted asylum from fully integrating into the United States through the adjustment of status and citizenship due to ill-conceived terrorism-related bars. While several improvements have been made by the current and former Administrations, the asylum process is in critical need of reform to ensure that it is fair and efficient.

We support the following reforms that would strengthen the asylum system. Specifically, we support legislation to authorize Department of Homeland Security/U.S. Citizenship and Immigration Services (DHS/USCIS) asylum officers to adjudicate asylum claims and the elimination of the 1-year filing deadline, and urge Congressional oversight for other needed Administrative reforms.

Issue Regulations Codifying Recent Improvements to Expedited Removal
Expedited removal authorizes U.S. immigration officials to summarily return people arriving in the United States without proper documentation to their country of origin. Because many bona fide asylum seekers are unable to acquire proper documents, Congress included provisions for asylum seekers to be detained while a determination is made if they have a credible fear of persecution. Recent Immigration and Customs Enforcement (ICE) practice also dictates that if an asylum seeker is found to have a credible fear of persecution, this individual can be released from detention on parole while his or her case is pending before an immigration judge.

In FY2012, ICE reported that 80% of asylum seekers found to have a credible fear were granted parole and the other 20% were detained as they could not establish "exceptional overriding factors."[1] While the parole guidelines released by ICE in 2009 help ensure asylum-seekers are not inappropriately detained, ICE should codify into regulations the new parole process and criteria under which asylum seekers who are found to have a credible fear of persecution can be paroled instead of detained.

Improve Detention Standards for Asylum-seekers

Asylum-seekers arrive to the United States having faced trauma. Detaining such individuals in penal detention centers risks re-traumatizing these individuals. A 2005 study by the U.S. Commission on International Religious Freedom (USCIRF) found that in some facilities, asylum seekers were housed with inmates serving criminal sentences or criminal aliens, despite ICE detention standards forbidding the co-mingling of non-criminal detainees with criminals.[2] In addition, the study found asylum seekers were required to wear prison uniforms and were handcuffed and shackled like criminals.[3] A newly released study by USCIRF in April 2013, found that only 4,000 of ICE's 33,400 detention beds are in civil facilities. Most asylum-seekers continue to be held in jail-like facilities.[4]

Detention should not be used as standard practice. Asylum seekers, who in many cases are already traumatized, should only be detained in rare cases where necessary to protect national security or to ensure fraudulent documents are not used to assert an asylum claim. When detention must be used, ICE should ensure all asylum seekers are detained in civil facilities only and that such facilities meet minimum standards of care for the detainees. Such facilities should allow for greater freedom of movement, expanded programming activities, and access to legal counsel and a Legal Orientation Program (LOP).

Authorize DHS/USCIS Asylum Officers to Adjudicate Asylum Claims

Trained USCIS asylum officers make a credible fear determination and then refer asylum-seekers identified at or near a U.S. border who have demonstrated a credible fear of return to overwhelmed immigration courts rather than adjudicating the case themselves as they do in affirmative asylum cases. This unnecessarily adds to the burden on the immigration courts, uses scarce government resources inefficiently, and exposes asylum-seekers to additional trauma and in some cases prolonged detention.

For those asylum seekers found to have a credible fear, they may then submit an asylum application to an immigration court within Department of Justice (DOJ)'s Executive Office for Immigration Review (EOIR), and immigration judges hear the cases. Denied asylum seekers can file an appeal with the Board of Immigration Appeals (BIA). With these various agencies and adjudicating officers making decisions at various points in the asylum process, coordination remains a major challenge between DHS and DOJ and also within DHS itself.

To make the process more efficient and for humanitarian reasons, we urge the authorization of asylum officers to conduct full, non-adversarial asylum interviews of asylum-seekers identified at or near a U.S. border, rather than sending them directly to full adversarial hearings before the immigration courts. This

[1] Assessing the U.S. Government's Detention of Asylum Seekers: Further Action Needed to Fully Implement Reforms (2013), U.S. Commission on International Religious Freedom, available online at http://www.uscirf.gov/images/ERS-detention%20reforms%20report%20April%202013.pdf

[2] Report on Asylum Seekers in Expedited Removal, U.S. Commission on International Religious Freedom (2005), available online at http://www.uscirf.gov/reports-and-briefs/special-reports/1892-report-on-asylum-seekers-in-expedited-removal.html

[3] Ibid

[4] Assessing the U.S. Government's Detention of Asylum Seekers: Further Action Needed to Fully Implement Reforms (2013), U.S. Commission on International Religious Freedom, available online at http://www.uscirf.gov/images/ERS-detention%20reforms%20report%20April%202013.pdf

would occur after they have both expressed a fear of return to Customs and Border Patrol (CBP) and successfully passed a credible fear interview. All of the background and security checks in the current process would be maintained. This would resolve many asylum cases effectively without the need to expend the additional resources required for immigration court hearings and also reduce the number of claims heard in the Board of Immigration Appeals. The ability for an asylum-seeker to also discuss their situation in a non-adversarial setting would facilitate more detailed, improved information about the claim.

Eliminate the 1-year Filing Deadline
The 1-year filing deadline instituted in 1996 as a fraud deterrent has become a barrier to many with a well-founded fear of persecution. Some asylum seekers with a well-founded fear of persecution have been denied asylum and/or ordered deported simply because they did not meet the 1-year deadline as they were unaware of the deadline or in some cases have been so severely traumatized that it takes over a year to process and write about their situation in an asylum application. A study by Philip Schrag in the William and Mary Law Review, in fact, found that since 1998, DHS rejected, because of the deadline, at least 15,700 individuals to whom it would otherwise have granted asylum.[5]

Any and all fraudulent asylum claims should be investigated and dealt with accordingly. The United States has instituted strong anti-fraud measures in the asylum system to ensure fraudulent claims are properly dealt with and doing so ensures the integrity of the system. The filing deadline, however, has had limited impact on deterring fraud, and instead made the current system more inefficient as the overburdened immigration courts have to divert limited time and resources focused on determining the date of entry and filing date instead of assessing the actual merits of the asylum claim. Even asylum seekers who file within 1 year of arrival may still be negatively impacted by the deadline if they cannot show their date of entry. Extending the deadline to two or five years or expanding the exceptions to the deadline would not resolve the problem as the courts will still need to determine date of entry as a core determining factor in their asylum claim.

Refugees barred by the current filing deadline only have access to a temporary form of protection, withholding of removal, but this does not provide long term stability or security through permanent residency and leaves them at risk of deportation and detention. Withholding of removal also does not allow refugees to petition to bring their children and spouses to safety in the United States, keeping refugee families divided and leaving young children stranded in difficult and dangerous circumstances abroad.

We strongly support eliminating the filing deadline so bona fide refugees will not be returned back to their country of persecution based on an arbitrary requirement.

Ameliorate Unintended Consequences of Terrorism-related Inadmissibility Grounds (TRIG)
For over a decade, expanded definitions of "terrorism" and "terrorism-related activity" in the USA Patriot Act of 2001 and the Real ID Act of 2005 have denied bona fide refugees and asylees admission, legal permanent residence, and the ability to bring their spouses and children who remain overseas to the United States.

There currently are over 3,000 refugees and asylees whose cases are on hold, despite having passed the difficult test to prove they are refugees. Some are refugees who are in dangerous situations abroad whose resettlement to the United States would offer them and their families protection from danger. In some cases, refugees and asylees who have been legally admitted to this country have waited as long as ten years to obtain legal permanent residence and reunite with their spouses and children. While this and

[5] Schrag, Philip, "Rejecting Refugees: Homeland Security's Administration of the One-Year Bar to Asylum," William and Mary Law Review 651 (2010), available online at http://wmlawreview.org/files/Schrag.pdf

previous Administrations have taken steps to issue exemptions, more must be done to fully implement the authority they have to eusure these bona fide refugees and asylum-seekers do not stay in legal limbo.

We urge USCIS to allow officers to examine cases and provide relief to individuals on a case-by-case basis for refugees who had voluntary associations with Tier III groups not designated as terrorist groups or treated as such by the U.S. government in any other context. Congress should also review and revise current legal interpretations of what constitutes "material support" to ensure statutory interpretations are brought in line with the purpose of the law, which is to exclude and deny relief to persons who provide meaningful support to terrorist groups and pose a terrorist threat to the United States.

Conclusion
As the House of Representatives considers major changes to our immigration laws, we urge you to give due consideration to strengthening our current asylum and refugee resettlement systems in a way that provides a fair and efficient process for those fleeing persecution to find safety in the United States. Specifically, we urge improvements to the expedited removal process, improved detention standards for asylum seekers and other immigrants, the authority for DHS/USCIS officers to adjudicate asylum claims, the elimination of the one-year filing deadline, and a re-examination of the impact of terrorism-related admissibility grounds (TRIG) on refugees and asylees.

The House of Representatives has a unique opportunity to ensure that our laws and the administration of those laws are consistent with the traditions and legacies that makes the United States a world leader in refugee protection.

Signed by:

Leith Anderson
President
National Association of Evangelicals

Stephan Bauman
President and CEO
World Relief

Robert Gittelson
Vice President of Government Relations
National Hispanic Christian Leadership Conference

Russell D. Moore
President
Southern Baptist Ethics & Religious Liberty Commission

Samuel Rodriguez Jr.
President
National Hispanic Christian Leadership Conference

Mathew Staver
Founder and Chairman of the Board, Liberty Counsel
Dean, Liberty University School of Law

human rights *first*

STATEMENT FOR THE RECORD OF ELEANOR ACER

Director, Refugee Protection Program

HUMAN RIGHTS FIRST

On

"Asylum Abuse: Is it Overwhelming Our Borders?"

Submitted to the

House Judiciary Committee

December 12, 2013

About Human Rights First

Human Rights First is an independent advocacy organization that challenges America to live up to its ideals. We are a non-profit, nonpartisan international human rights organization based in New York and Washington D.C. To maintain our independence, we accept no government funding. For over 30 years, we've built bipartisan coalitions and teamed up with frontline activists and lawyers to tackle issues that demand American leadership, including the protection of the rights of refugees. Human Rights First oversees one of the largest pro bono legal representation programs for refugees in the country, working in partnership with volunteer attorneys at U.S. law firms. Through that program, we see day in and day out the ways in which current U.S. immigration laws and policies are denying or delaying protection to refugees who seek this country's protection from political, religious and other persecution.

Overview

Protecting the persecuted is a core American value. Reflecting this country's deep-seated commitment to liberty and human dignity, as well as its pledge under the Refugee Convention's Protocol, the United States has long led efforts to provide refuge to those who flee from political, religious and other persecution. A strong and timely asylum and immigration system, that includes effective tools for fighting abuse, is essential both for ensuring the integrity of the U.S. immigration process as well as for protecting refugees from return to places of persecution. If individuals or groups are defrauding the asylum system, steps should be taken to counter those abuses and punish the perpetrators. U.S. authorities have a range of effective tools that can and should be used to address abuses. As detailed in this testimony, these tools include: initial security checks with criminal, Federal Bureau of Investigation, and security agency databases, and prosecutions of any individuals orchestrating fraud. Another tool is the asylum adjudication system and the immigration courts, making it imperative to staff it properly to address the delays and backlogs that have plagued the system. These delays both increase the vulnerability of our immigration system to abuse and prevent refugees from having their cases adjudicated in a timely manner, often leaving refugee families stranded in difficult and dangerous situations abroad.

As we address the real abuses however, it is critical to also safeguard the ability of the U.S. asylum system to protect refugees fleeing persecution. In recent years, so many barriers and hurdles have been added to the asylum system through multiple rounds of legislation that refugees who seek the protection of the United States often find themselves denied asylum, delayed in receiving protection, or lingering for months in jails and jail-like immigration detention facilities.

This country can and should both preserve the integrity of its immigration system and also provide asylum to refugees in a timely, fair and efficient manner. U.S. immigration authorities have the legal and policy mechanisms they need to address this problem. While additional staffing is needed for the adjudication system, further changes in law that would increase

detention for asylum seekers or risk turning refugees back to persecution are not necessary, and are inconsistent with this country's values and commitments.

As detailed in this statement, the United States should:

- **Increase Immigration Court Staffing and Resources:** Congress should increase resources for immigration court staffing which have lagged significantly behind the corresponding increases for immigration enforcement that have put so many people into the immigration removal process;

- **Increase Fraud and Abuse Detection Resources and Utilize Multiple Anti-Fraud Tools:** Congress should increase resources for fraud, criminal and abuse detention, U.S. immigration authorities (U.S. Citizenship and Immigration Services and Immigration and Customs Enforcement) should use the many available tools to address fraud or abuse, and federal prosecutors should prosecute individuals who orchestrate schemes that defraud the asylum system;

- **Effectively Implement Asylum Parole Guidance:** Immigration and Customs Enforcement should effectively implement the existing asylum parole guidance, and – in accordance with that guidance – not release any individual who presents a danger to the community or flight risk (utilizing alternatives to detention as outlined below);

- **Use Cost-Effective Alternatives to Detention:** Immigration and Customs Enforcement should increase its use of cost-effective alternatives to detention that have been demonstrated to produce high appearance rates both for asylums seekers and other immigrants. Congress should support flexibility in funding so that Immigration and Customs Enforcement can utilize these alternatives to save costs in cases where detention is not necessary to meet the government's need for appearance, where additional supervision would assure appearance, and the individual poses no danger;

- **Eliminate the asylum filing deadline which bars legitimate refugees** from asylum, and needlessly adds to the number of cases in the immigration courts; and

- **Implement U.S. Commission on International Religions Freedom (USCIRF) Recommendations and Request Updated USCIRF Study**: Department of Homeland Security and Immigration and Customs Enforcement should implement U.S. Commission on International Religious Freedom recommendations, including: use facilities that do not have jail-like conditions when asylum seekers are detained, put the existing parole guidance into regulations, and expand legal orientation presentations. Congress should request and support an updated study of the conduct of expanded removal and its expansion.

The Importance of the U.S. Asylum System

In the wake of World War II, the United States played a leading role in building an international refugee protection regime to ensure the world's nations would never again refuse to extend shelter to refugees fleeing persecution and harm. The United States has committed to the central guarantees of the 1951 Refugee Convention and its 1967 Protocol. Over thirty years ago, when Congress—with strong bipartisan support—passed the Refugee Act of 1980, the United States enshrined into domestic law its commitment to protect the persecuted, creating the legal status of asylum and a formal framework for resettling refugees from around the world.

In the intervening years, the United States has granted asylum and provided resettlement to thousands of refugees who have fled political, religious, ethnic, racial and other persecution. These refugees have come from Burma, China, Colombia, Guatemala, Iran, Iraq, Liberia, Rwanda, Russia, Sierra Leone, Sudan and other places where people have been persecuted for who they are or what they believe. Many were arrested, jailed, beaten, tortured or otherwise persecuted due to their political or religious beliefs, or their race, ethnicity, sexual orientation or other fundamental aspect of their identity. Over the years, these refugees and their families have been able to rebuild their lives in safety in the United States.

The Many Hurdles Refugees Already Face in Seeking America's Protection

In recent years, so many hurdles and barriers have been added to the asylum system, through round after round of legislation, that many refugees often find their claims for U.S. protection denied or delayed. These impediments and hurdles include: expedited removal, "mandatory detention," the asylum filing deadline, and the overly broad terrorism-related inadmissibility provisions of immigration law that are leading to denials and delays for thousands of genuine refugees who present no threat to this country. The United States has also dramatically increased its use of immigration detention, and asylum seekers can be left for months or longer in jails and jail-like detention facilities. Human Rights First has documented many of these problems in a series of reports.[1]

Some examples of the many refugees impacted by these hurdles include:

- A Baptist Chin woman from Burma was detained in an El Paso, Texas, immigration jail for over two years before finally being granted asylum.

[1] *See* Human Rights First, *Is This America? The Denial of Due Process to Asylum Seekers in the United States* (New York: Human Rights First, 2000) available at http://www.humanrightsfirst.org/our-work/refugee-protection/due-process-is-this-america/; Human Rights First, *U.S. Detention of Asylum Seekers: Seeking Protection, Finding Prison* (New York: Human Rights First, 2009), at: http://www.humanrightsfirst.org/wp-content/uploads/pdf/090429-RP-hrf-asylum-detention-report.pdf; Human Rights First, *The Asylum Filing Deadline: Denying Protection to the Persecuted and Undermining Governmental Efficiency*, (New York: September 2010) available at http://www.humanrightsfirst.org/wp-content/uploads/pdf/afd.pdf; Human Rights First, *Jails and Jumpsuits: Transforming the U.S. Immigration Detention System—A Two-Year Review*, (New York: Human Rights First, 2011) at http://www.humanrightsfirst.org/wp-content/uploads/pdf/HRF-Jails-and-Jumpsuits-report.pdf.

- A Russian man – who fled his country after suffering repeated attacks and beatings because of his sexual orientation – was detained in as U.S. immigration jail for five months, held in solitary confinement for much of that time, and only released recently after being granted asylum;

- A Tibetan man, who for more than a year was detained and tortured by Chinese authorities after putting up posters in support of Tibetan independence, was detained again for nearly a year in a U.S. immigration detention facility;

- A Colombian man who fled persecution in his home country was turned away from a U.S. airport under expedited removal even though he expressed a fear of return. His persecution continued, prompting him to attempt the dangerous journey to flee again. He was eventually granted asylum in the United States after his mistaken expedited removal was corrected; and

- A young woman from Eritrea who was tortured for her Christian beliefs had her request for asylum in the United States denied due to the asylum filing deadline even though a U.S. immigration judge concluded that she faced a clear probability or persecution.

The History and Purpose of the Credible Fear Process

In 1996, as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Congress created both "expedited removal" and the credible fear process. Under expedited removal, immigration officers have the power to order the immediate, summary deportation of people who arrive in the United States without proper travel documents. That authority had previously been entrusted to the Immigration Courts. When the expedited removal process was first implemented, the former Immigration and Naturalization Service (INS) applied it only to those who sought admission at a U.S. airport or border entry point without valid documents. Between 2004 and 2006, expedited removal was expanded to apply to those encountered within 100 miles of any U.S. border if they have been in the country for less than 14 days, and the number of individuals subject to this summary process has increased significantly.[2]

Expedited removal policies place the United States at risk of deporting asylum seekers fleeing persecution without giving them a meaningful opportunity to apply for asylum. To summarily deport an asylum seeker would be inconsistent with American values as well as commitments under the Refugee Convention and Protocol which prohibit the return of a refugee to any country in which the refugee's "life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group or political opinion." The potential impact on individuals fleeing persecution is so dire that the Advisory Committee on Religious Freedom

[2] U.S. DEPT. OF HOMELAND SECURITY, IMMIGRATION ENFORCEMENT ACTIONS: 2008 4 (2009), *available at* http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement_ar_08.pdf

Abroad to the Secretary of State and to the President of the United States called for repeal of expedited removal in its final report in May 1999. [3]

Recognizing the importance of U.S. commitments to protect those facing persecution, the U.S. Congress created a screening process. Individuals who express a fear of return are supposed to be referred for screening interviews with U.S. Asylum Officers to determine if they have a "credible fear of persecution," defined as a significant likelihood of establishing a claim to asylum. If an asylum seeker passes that screening process, he or she will be placed into removal proceedings before the Immigration Court to apply for asylum. Those who do not meet the credible fear standard are summarily deported. An individual who expresses a fear of return *must* pass the credible fear process in order to even be allowed to apply for asylum. In adopting the standard ultimately included in the 1996 law, the Conference Committee on the 1996 immigration law declined to include the higher "preponderance of the evidence" standard that had been included in the House version of the bill. In addition, Senator Hatch, a principal sponsor of the legislation, in discussing the Conference Committee's rejection of the higher standard, confirmed that "[t]he standard adopted ... is intended to be a low screening standard for admission in the usual full asylum process." Cong. Rec. S11491 (Sept. 27, 1996)(daily ed.).

The "credible fear" process is not an asylum application itself. It is simply a screening process that will determine whether an individual who expresses a fear of return will be allowed to apply for asylum. Some examples of individuals who have been protected from summary deportation by the credible fear process include:

- An Eritrean Pentecostal man who was brutally tortured and detained for three years after being accused of belonging to a political opposition group;
- A Burmese Baptist woman who feared persecution by that country's military regime because of her protests for democracy and equal treatment of political and religious minorities;
- A Guatemalan family who were persecuted – and the oldest daughter killed – after the father joined an association that stood up to gangs with connections to the police; and
- A pro-democracy activist from Ethiopia who was detained for two years after distributing campaign materials and otherwise peacefully supporting an opposition political party.

Insufficient safeguards in Expedited Removal

The expedited removal process lacks sufficient safeguards to ensure that asylum seekers are not mistakenly deported. The bi-partisan U.S. Commission on International Religious Freedom (USCIRF), which conducted a comprehensive study of expedited removal, found serious flaws in the implementation of expedited removal. For example, immigration officers failed to inform individuals that they could ask for protection if they feared returning to their countries in about

[3] U.S. Commission on Immigration Reform, *U.S. Refugee Policy: Taking Leadership*, June 1997, at 38; *Final Report of the Advisory Committee on Religious Freedom Abroad to the Secretary of State and to the President of the United States*, May 17, 1999, at 45.

half of the cases observed by USCIRF experts, failed to ask critical questions relating to fear of return in about 5 percent of cases, and actually ordered the deportation of individuals who expressed a fear of return in about 15 percent of the cases observed by USCIRF experts.[4] USCIRF also found that immigration inspectors had subjected individuals who arrived on valid passports and otherwise valid visas to the expedited removal process—and its mandatory detention provision—if they expressed a fear of return.[5]

Over the years, human rights groups, academic studies – such as The Expedited Removal Study, an academic study that released a series of comprehensive reports on expedited removal[6] – and the press have documented flaws in expedited removal as well as individual cases of asylum seekers who were mistakenly deported to their countries of persecution under expedited removal. These cases included an Albanian rape survivor and a Colombian asylum seeker who were returned to countries where their lives were in danger.[7]

Refugee women are particularly vulnerable to the risks posed by expedited removal. For example, women who are survivors of rape and gender-related traumas may have great difficult talking about their traumatic experiences to immigration officers at the border, and some immigration officers still do not recognize that in some cases women are eligible for asylum due to fears of gender-based persecution. In one case documented by Human Rights First, a victim of severe domestic violence and rape was ordered deported under expedited removal because officers who interviewed her mistakenly believed that she would not be able to articulate a claim for asylum. Her deportation was averted after several U.S. Senators complained about the decision, and she was ultimately able to prove that she was eligible for asylum protection through a full asylum hearing.[8]

A recent media story indicated that a non-public Border Patrol memo asserts that "individuals with direct and indirect associations to narcotics trafficking and other illegal activity are now residing in the United States under the protective status of [credible fear]."[9] A November 22, 2013 House Judiciary Committee statement about this media piece stated that "[o]nce these

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[4] U.S. Commission on International Religious Freedom (USCIRF). *Report on Asylum Seekers in Expedited Removal*. 2005. P. 54. At http://www.uscirf.gov/reports-and-briefs/special-reports/1892-report-on-asylum-seekers-in-expedited-removal.html

[5] USCIRF Report on Expedited Removal at pp. 69-70

[6] The Expedited Removal Study is a project of the Center for Human Rights and International Justice at the University of California, Hastings College of Law. The Study released comprehensive reports in 1998, 1999, and 2000, and a second report in October 2002 which evaluated a GAO report. The reports are available at www.uchastings.edu/ers.

[7] *See* Human Rights First (then Lawyers Committee for Human Rights), *Is This America? The Denial of Due Process to Asylum Seekers in the United States*, Oct. 2002 at 57-58; Eric Schmidt, *When Asylum Requests are Overlooked*, N.Y. TIMES, Aug. 15, 2001. Articles relating to the Albanian rape survivor appeared *The New York Times* on Sept. 20, 1997 and Jan. 14, 1998.

[8] Human Rights First (then Lawyers Committee for Human Rights), Refugee Women at risk: Unfair U.S. Laws Hurt Asylum Seekers (2002).

[9] Dinan, Stephen. "Mexican drug cartels exploit asylum system by claiming 'credible fear.'" *Washington Times*. November 21, 2013, at http://www.washingtontimes.com/news/2013/nov/21/committee-examines-reports-mexican-drug-cartels-us/?page=1

unscrupulous individuals falsely claim a "credible fear" of persecution, there is virtually no investigation by U.S. authorities."

The Committee should ensure that USCIS and ICE officials have the full opportunity to outline all steps they take and can take to address any abuse, and should allow officials to provide the Committee with information about these allegations. Allegations of abuse should be taken seriously and addressed. It should however be noted that "credible fear" is not a "protective status" and does not confer a status at all. It is simply a screening step that has the effect of putting an individual into removal proceedings and allowing them to apply for asylum.

In order to address any abuse, U.S. authorities should use the tools outlined below, increase, if and where necessary, referrals to law enforcement officials investigating drug-related activity and increase resources for fraud detention and abuse. Legislative changes to the credible fear standard – which already leads some refugees to be turned away from the United States in violation of our ideals and our treaty commitments – is not the answer.

U.S. immigration authorities may refer any case of suspected fraud or abuse for investigation. Officials take several measures to detect individuals who are orchestrating or perpetrating fraud on the U.S. asylum and immigration systems or who may pose a danger to national security. These include:

- Mandatory biographical checks in Federal Bureau of Investigation, Department of State, Department of Homeland Security, and other databases;
- Mandatory biometric checks using the applicant's fingerprints and photograph;
- Additional biographical screening by the National Counterterrorism Center (NCTC);
- Mandatory supervisory review of all asylum decisions; and
- Full-time Fraud Detection and National Security (FDNS) officers who monitor the asylum system for fraud.

In addition, perpetrators of fraud – including unscrupulous lawyers and notaries, and individuals who orchestrate fraud – can be prosecuted.[10]

Detention and Parole of Asylum Seekers

Asylum seekers who are placed into "expedited removal" are subject to "mandatory detention." An asylum seeker who passes through the credible fear/expedited removal process, and is placed into regular immigration court removal proceedings, is eligible to be assessed for potential release but only if he or she satisfies the relevant criteria. Those asylum seekers who expressed their fear of return at a U.S. airport or official port of entry, rather than those apprehended between the ports of entry, are considered "arriving" asylum seekers, and may be eligible for release under parole guidance only *if* they meet the relevant criteria. Immigration authorities –

[10] An extensive list of the measures in place is available in the Human Rights First Backgrounder on Bars and Security Screening in the Asylum and Refugee Processes at: http://www.humanrightsfirst.org/wp-content/uploads/HRF-Security-Safeguards.pdf

over many years, and spanning various administrations – have repeatedly recognized that arriving asylum seekers who pass the credible fear screening process are eligible to be considered for parole.[11]

In order to be paroled, arriving asylum seekers must satisfy certain criteria. Key factors in assessing parole eligibility have consistently – over many years and various administrations – included that:

- the asylum seeker passes the credible fear screening process,
- the asylum seeker can establish his or her identify;
- the asylum seeker is not a flight risk/has community ties; and
- the asylum seeker does not present a risk or danger to the community.

The current asylum parole guidance for asylum seekers specifically states that "Field Office personnel must make a determination whether an alien found to have a credible fear poses a danger to the community or the U.S. national security" and only authorizes release from detention on parole if ICE determines that the individual "poses neither a flight risk nor a danger to the community."[12]

Despite the possibility of applying for parole, many asylum seekers have been detained for months or years in U.S. immigration detention facilities. Over the years, Human Rights First has repeatedly documented the impact of immigration detention on asylum seekers. Some examples from Human Rights First's reports[13] include these examples of refugees who were detained, at significant cost to the U.S. government, for months or years in jails or jail-like facilities:

- A Guinean human rights activist, who had been abducted by government security forces in his country, was detained for four and a half months in a U.S. immigration jail in New

[11] See Michael A. Pearson, *INS Executive Associate Commissioner for Field Operations, Memorandum, Expedited Removal: Additional Policy Guidance* (Dec. 30, 1997) (hereinafter "1997 Memorandum"); U.S. Immigration and Customs Enforcement, Parole of Arriving Aliens Found to Have a "Credible Fear" or Persecution or Torture," signed by ICE Assistant Secretary Julie Myers, November 6, 2007; U.S. Immigration and Customs Enforcement, Parole of Arriving Aliens Found to Have a Credible Fear of Persecution nor Torture, signed by Asistant Secretary John Morton, December 8, 2009. Although IIRIRA provides for the mandatory detention of those subject to expedited removal, once an individual seeking asylum has established a credible fear of persecution, he may be released on parole. INA § 235(b)(1)(B)(iv). As the INS at the time confirmed (in the above-referenced Guidance on Expedited Removal) "[o]nce an alien has established a credible fear of persecution or is otherwise referred (as provided by regulation) for a full removal proceeding under section 240, release of the alien may be considered under normal parole criteria." *See* INA § 235(b)(1)(B)(iv); *see also id.* § 212(d)(5)(A) (providing for parole "on a case-by-case basis for urgent humanitarian reasons or significant public benefit" for an alien applying for admission to the United States); 8 C.F.R. § 212.5(b).

[12] 2009 Parole Guidance at pp. 6, 8.

[13] Human Rights First, U.S. Detention of Asylum Seekers: Seeking Protection, Finding Prison (New York: Human Rights First, 2009), at pp 2 at: http://www.humanrightsfirst.org/wp-content/uploads/pdf/090429-RP-hrf-asylum-detention-report.pdf; see also Human Rights First, *Jails and Jumpsuits: Transforming the U.S. Immigration Detention System—A Two-Year Review*, (New York: Human Rights First, 2011) at http://www.humanrightsfirst.org/wp-content/uploads/pdf/HRF-Jails-and-Jumpsuits-report.pdf and Human Rights First, *In Liberty's Shadow: U.S. Detention of Asylum Seekers in the Era of Homeland Security.* (New York: Human Rights First, 2004) at http://www.humanrightsfirst.org/wp-content/uploads/pdf/Libertys_Shadow.pdf.

Jersey. He was only released three weeks before being granted asylum by a U.S. immigration court.

- A Liberian Pentecostal pastor who was detained in the United States for three and half months and denied parole, even though several ministers in the United States confirmed his identity and his religious work in Liberia. In Liberia, he had been targeted by the regime of Charles Taylor because he had criticized the use of child soldiers. He was only released from U.S. immigration detention after he was granted asylum.
- A Baptist Chin woman from Burma was detained in an El Paso, Texas, immigration jail for over two years. ICE denied several parole requests even though she had proof of her identity and family in the U.S.—only paroling her after 25 months in detention. She was subsequently granted asylum.
- An Iraqi Christian refugee was detained at the Otay Mesa facility in San Diego for four and a half months, costing ICE at least $89.50 per night, for a total detention cost of more than $12,000. If instead, he had been released on parole after two weeks in detention, the cost would have been closer to $1,250, and if he had been released to an alternatives to detention program, the costs would have been only about $2,000—$10,000 less than detention.
- A Tibetan refugee was detained for eight months at the Santa Ana jail in California costing $19,680 at $82 per night. If instead, he had been released on parole after two weeks in detention, the cost would have been closer to $1,148, and if he had been released to an alternatives-to-detention program, the costs would have been closer to $2,400 to $3,360.
- A woman from Somalia was detained at the Elizabeth Detention Center in New Jersey for more than five months until she was granted asylum, at a cost of $161.42 per night for a total of $25,827.20. If instead, she had been released on parole after two weeks in detention, the cost would have been closer to $2,260, and if she had been released to an alternatives-to-detention program, the costs would have been closer to $1,600 to $2,240.
- A Burmese refugee was detained at the Pearsall Detention Center for seven months, costing more than $17,700 at $84.51 per night. If instead, she had been released on parole after two weeks in detention, the cost would have been closer to $1,180, and if she had been released to an alternatives-to-detention program, the costs would have been closer to $2,100 to $2,940.

The bipartisan U.S. Commission on International Religious Freedom, in its comprehensive 2005 report, made a number of findings and recommendations relating to asylum seekers in immigration detention, including:

- **Asylum Seekers Detained in Facilities with Inappropriate Jail-like Conditions:** The Commission concluded that most asylum seekers referred for credible fear are detained – for weeks or months and occasionally years – in jails or jail-like facilities. The Commission concluded that these facilities are inappropriate for asylum seekers, and the

Commission's experts found that these conditions create a serious risk of psychological harm to asylum seekers. The Commission recommended that asylum seekers be held in "non-jail-like" facilities when detained, and that DHS create detention standards tailored to the needs of asylum seekers and survivors of torture.

- **Parole Reforms Needed to Ensure Parole of Asylum Seekers who Meet Criteria:** The Commission's 2005 report found wide variations in asylum parole rates across the country based on its analysis of DHS statistics. The report also found no evidence that ICE was applying the parole criteria that were spelled out in the policy guidelines in effect at the time. The Commission recommended that DHS promulgate regulations on the parole of asylum seekers to ensure the release on parole of asylum seekers who meet the relevant standards, including identity and no security risk, and to promote more consistent implementation of parole criteria.

USCIRF subsequently issued several "report cards" assessing DHS's responses to its recommendations, and in April 2013, the Commission issued a Special Report entitled: *Assessing the U.S. Government's Detention of Asylum, Seekers: Further Action Needed to Fully Implement Reforms*. In this report, the Commission found that, despite some progress, "[t]he U.S. government continued to detain asylum seekers under inappropriate conditions in jails and jail-like facilities," and recommended that more be done to "ensure that, when their detention is necessary, asylum seekers are housed only in civil facilities."[14]

With respect to parole for asylum seekers, the Commission noted that the December 2009 parole guidance was in line with USCIRF's prior recommendations, and urged additional steps to assure its effective implementation, including codification into regulations. The Commission explained in its 2013 report that:

> USCIRF has recommended that asylum seekers with credible fear who do not pose flight or security risks should be released, not detained and that such a policy be codified into regulations. Asylum seekers may have suffered trauma and abuse prior to arrival in the United States and detaining them after credible fear interviews may be re-traumatizing, with long-term psychological consequences.[15]

Citing to recent media reports, House Judiciary Committee Chairman Goodlatte has raised a number of questions about the parole process for asylums seekers and the current ICE parole guidelines for asylum seekers, issued in December 2009. In a November 22, 2013 statement, he has stated that "Because the Obama Administration refuses to detain most of them, criminals and those who pose national security threats are then able to live and work in the U.S. for many years before their cases are ever heard by immigration judges." As noted above, the current ICE parole guidance for asylum seekers specifically requires that "Field Office personnel must make a determination whether an alien found to have a credible fear poses a danger to the community or the U.S. national security" and only authorizes parole if ICE determines that the individual

[14] USCIRF 2013 report at 1-2 ff.
[15] USCIRF 2013 report at 9,10.

"poses neither a flight risk nor a danger to the community."[16] Human Rights First strongly supports effective and timely criminal and security check systems.

In terms of the lengthy delays in immigration court proceedings, Human Rights First agrees that more timely immigration court hearings are essential for both the integrity of the immigration system and to protect asylum seekers who now wait years for their cases to be resolved, while their families often remain stranded for years in dangerous or difficult conditions abroad. As a result, Human Rights First has repeatedly recommended that funding and staffing for the immigration courts be increased in order to bring immigration court staffing up to match the significant increase in individuals placed in immigration court removal proceedings in recent years. Additional staffing will ease the delays and backlogs that have plagued the immigration courts in recent years.[17]

Chairman Goodlatte has also expressed concern – in an August 2013 letter to former DHS Secretary Janet Napolitano – that "credible fear claims are being exploited by illegal immigrants in order to enter and remain in the United States" and that "once these aliens receive court dates, they often fail to appear for immigration court proceedings and end up disappearing into the United States." In the letter, he stated that "[a]dditionally, while ICE is not detaining these aliens, Fiscal Year 2012 Executive Office of Immigration Review (EOIR) statistics demonstrate that 29% of released aliens failed to appear for their immigration court proceedings."

Current ICE parole guidance makes clear that only "arriving" asylum seekers who have completed a credible fear screening successfully can be paroled under the guidance, and only *if* ICE Enforcement and Removal Operations determines that the alien's identity is sufficiently established and the alien does not pose a flight risk. If there are individual asylum seekers who are believed to need additional supervision in order to assure appearance, ICE can and should use alternatives to detention mechanisms, which include case management, electronic monitoring and other tools. These mechanisms can greatly enhance appearance rates at both hearings and for deportation.[18] Moreover, current EOIR statistics indicate that asylum seekers actually appear for their immigration court hearings at high rates. According to statistics that the U.N. High Commissioner for Refugees (UNHCR) has obtained from the EOIR, in Fiscal Year 2012 only five percent of completed asylum proceedings had an in absentia removal order.

Chairman Goodlatte also appears to question whether the December 2009 parole guidance is leading to the documented increase in credible fear claims. In his August letter, he remarked "not surprisingly, the timing of this memo appears to correlate with the uptick of credible fear claims

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[16] 2009 Parole Guidance at pp. 6, 8.

[17] See *Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases*. American Bar Association, Commission on Immigration. 2010. Pp. 2-16 to 2-18 and 2-36 to 2-38. Available at: http://www.americanbar.org/content/dam/aba/migrated/Immigration/PublicDocuments/aba_complete_full_report.authcheckdam.pdf .

[18] Martin, Steve and Julie Myers Wood. "Smart alternatives to immigrant detention." *Washington Times*. March 28, 2013, available at http://www.washingtontimes.com/news/2013/mar/28/smart-alternatives-to-immigrant-detention/. Ms. Wood has testified more recently that 99 percent of participants in the ISAP II alternatives to detention program appear at their final immigration court hearing, and 84 percent comply with removal orders.

in recent years." However, both in the United States and around the world, it has typically been the case that external factors relating to persecution, violence and war, are the drivers of flight. Many media and human rights reports have documented the increased violence in Central America. Moreover, the parole guidance applies only to a portion of individuals who are put into the credible fear process – and it appears that the uptick in individuals expressing a fear of return is not limited to "arriving" asylum seekers who can seek parole under the guidance.

Finally, Chairman Goodlatte's August 2013 letter also seemed to question whether asylum seekers can be paroled even after they have successfully passed through the credible fear/expedited removal process and into the regular removal process. As his letter acknowledges though, an applicant can be paroled where there are urgent humanitarian reasons or a significant public benefit. The existing parole guidance specifically details its interaction with the relevant statutory and regulatory parole provisions, and specifically explains that it "explains how the term [public interest] is to be interpreted by DRO when it decides whether to parole arriving aliens determined to have a credible fear."[19]

Recommendations

As outlined above, the following steps should be taken to address any abuses that are impacting the asylum system:

- **Increase Immigration Court Staffing and Resources:** Congress should increase resources for immigration court staffing, which have lagged significantly behind the corresponding increases for immigration enforcement that have put so many people into the immigration removal process;
- **Increase Fraud and Abuse Detection Resources and Utilize Multiple Anti-Fraud Tools:** Congress should increase resources for fraud, criminal and abuse detention. U.S. immigration authorities (U.S. Citizenship and Immigration Services and Immigration and Customs Enforcement) should use the many available tools to address fraud or abuse, and federal prosecutors should prosecute individuals who orchestrate schemes that defraud the asylum system;
- **Effectively Implement Asylum Parole Guidance:** Immigration and Customs Enforcement should be held accountable to effectively implement the existing asylum parole guidance, and – in accordance with that guidance – not release any individual who presents a danger to the community or flight risk (using alternatives as outlined below);
- **Use Cost-Effective Alternatives to Detention:** Immigration and Customs Enforcement should increase its use of cost-effective alternatives to detention that have been demonstrated to produce high appearance rates both for asylums seekers and other immigrants. Congress should support flexibility in funding so that Immigration and Customs Enforcement can utilize these alternatives to save costs in cases where detention is not necessary to meet the

[19] December 2009 parole guidance at par. 4.4.

government's need for appearance, where additional supervision would assure appearance, and the individual poses no danger;

- **Eliminate the asylum filing deadline which bars legitimate refugees** from asylum, and needlessly adds to the number of cases in the immigration courts; It has not proven to be an effective anti-fraud tactic by any measure; and
- **Implement U.S. Commission on International Religious Freedom Recommendations and Request Updated USCIRF Study**: Department of Homeland Security and Immigration and Customs Enforcement should implement U.S. Commission on International Religious Freedom recommendations, including: use facilities that do not have jail-like conditions when asylum seekers are detained, put the existing parole guidance into regulations, and expand legal orientation presentations. Congress should request and support an updated study of the conduct of expanded removal and its expansion.

Thank you for your consideration of Human Rights First's views.

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Immigration Equality is a non-profit organization which offers free legal services to LGBT asylum seekers. Each year, Immigration Equality and our pro bono partners carry a docket of more than 300 open asylum cases for LGBT applicants. We train asylum officers and immigration judges, mentor immigration attorneys, and write extensively on LGBT immigration issues. For these reasons, we are nationally recognized as experts in this area of the law.

Asylum is absolutely vital to the LGBT community, where more than 75 countries continue to criminalize homosexuality. We represent individuals from Russia, Uganda, Jamaica and many other nations. In just the last year, our lesbian and transgender clients have been raped "to cure" their sexual orientation and gender identity. Our gay clients have been set on fire, slashed with machetes, and sentenced to death. The protection of asylum literally saves their lives.

For many in the LGBT community, a desperate flight to freedom across the U.S. border is the only way to escape persecution and torture. Credible fear interviews are essential to ensure that their claims are heard and understood. Two of our clients from Ghana, a gay man and a lesbian, demonstrate why asylum and credible fear interviews are necessary:

> "Edward" fled Ghana after his extended family came to his home in the middle of the night to kill him for being gay. His uncles and cousins considered him to be an abomination, and sought to expunge the shame the family felt at having a gay relative. In desperation, Edward hid himself in a storage container on a freight ship, surviving for almost a week on one bottle of water and a small package of cookies. Shortly before arriving in the U.S., he announced himself to the ship's captain who turned Edward over to the Coast Guard.
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> By the time he reached immigration authorities, Edward was exhausted, terrified and very ill. He spoke little English, and signed a stipulated order of removal at the same time that he expressed a fear of persecution based on being gay. His removal officer informed him that he would not be given a credible fear interview because he had already agreed to be deported. U.S. officials then removed Edward to Ghana, where he was immediately arrested by homophobic police officers. At a traffic jam, Edward opened the door of the patrol car he was in, and ran for his life. Remarkably, he found another ship, and hid himself again in a storage container. This time, Edward was offered a credible fear interview, and given the opportunity to explain his case to an immigration judge. The judge found Edward's story to be credible and granted him asylum. He now lives openly and safely as a gay man in New Jersey, where he is active in the Highland Park Church and where he volunteers as a soccer coach.

Edward's journey demonstrates both the general importance of asylum for LGBT people, but also the absolutely vital role that a credible fear interview plays in saving the lives of deserving refugees. Once he had passed his credible fear interview, Edward was paroled into the U.S. This allowed him to work with his attorney to build his case, and cost the U.S. government no money to house and keep him. Below, another client's story further illustrates the necessity of a credible fear interview, but also demonstrates the detriment of unnecessarily prolonged detention:

> In Ghana, "Ama" was arrested, starved, beaten and left for dead because she was a lesbian. Her girlfriend was poisoned to death, with the words "Bitch, go find a man in hell" scrawled on the wall of her home. Ama spent all the money she had to fly to America, and asked for asylum at JFK airport. She was interviewed and found to have a credible fear of persecution. However, despite the fact that she had no criminal history, a compelling and meritorious asylum claim, and every reason to appear for her removal proceedings, she spent almost 100 nights in an immigration detention before being paroled.
>
> Shortly thereafter, an immigration judge granted her asylum, finding that it was too dangerous for her to live in Ghana as a lesbian. Now, she lives safely in the United States. While she studies to be a nurse, she volunteers with a medical facility that helps LGBT people in New York.

The merits of Ama's case were very similar to Edward's, yet she spent more than 3 months in detention waiting to be paroled. She states that during that time, she was treated "like a criminal," and that she felt, "terrified, confused, and humiliated." Credible fear interviews provide the U.S. government with a means to determine who should be removed immediately, and who should be paroled. Prolonged detention for individuals who have passed credible fear interviews is unnecessary, unwarranted, and expensive.

Edward and Ama's stories are only two of countless examples Immigration Equality could provide as to why asylum and credible fear interviews are necessary to the LGBT community. Each time the United States offers asylum to an LGBT refugee, it reconfirms its commitment to human rights and to basic human dignity. Credible fear interviews are an integral part of that system, a system which provides us with the ability to live free from mistreatment, persecution, and torture.

Lutheran Immigration and Refugee Service

LIRS Statement for Hearing: "Asylum Laws and Abuse"
House Judiciary Committee
December 12, 2013

Lutheran Immigration and Refugee Service (LIRS), the national agency established by Lutheran churches in the United States to serve uprooted people, is committed to helping asylum seekers and torture survivors access the protections to which they are legally entitled. LIRS advocates nationally and works in networks and coalitions to ensure newcomers in the United States are treated fairly and humanely and is a leading voice on protecting vulnerable migrants and refugees, including asylum seekers.

Obligations to Protect Individuals Fleeing Persecution

The United States Government must fulfill its obligation to provide protection to individuals fleeing persecution in their homelands. This obligation is found in international treaties the United States has ratified, such as the United Nations Refugee Convention and the Convention against Torture, as well as in domestic immigration law. In addition to legal obligations, our nation has a long and proud history of protecting and welcoming victims of persecution and torture. Finally, there is a moral imperative to protect the most vulnerable newcomers who arrive on our shore seeking safety and the chance to rebuild their lives.

Our asylum system provides refuge to men, women, and children who have endured unimaginable persecution in their countries of origin on account of their race, religion, political opinion, membership in a particular social group, or nationality.

There are numerous safeguards and procedures to ensure the integrity of the domestic asylum system, including mandatory biographic and biometric checks of applicants against various federal databases and dedicated, full-time fraud detection officers. Additionally, current laws prohibit the granting of asylum to any person who has engaged in terrorist activity or otherwise poses a threat to the security of the United States. Erecting new barriers to protection within the asylum system is unnecessary and would impede our obligations to protect bona fide asylum seekers.

Detention of Asylum Seekers

The United States detains asylum seekers, refugees, and torture survivors every day in jails or jail-like settings. These vulnerable men and women are among thousands of migrants apprehended by the Department of Homeland Security (DHS) each year and sent to immigration detention until they win their cases or are deported to their countries of origin. The United States government detains approximately 34,000 individuals for immigration purposes each day.

Under current immigration law (Section 235(b) of the Immigration and Nationality Act), arriving

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asylum seekers are subject to immigration detention pending a determination by a DHS, United States Citizenship and Immigration Services (USCIS) Asylum Officer regarding whether they have a "credible fear" of persecution as a result of their race, religion, ethnicity, political opinion or membership in a particular social group. Contrary to popular opinion, only individuals found removable on grounds related to criminal conduct or suspected terrorist activity, and arriving asylum seekers who were not found to have a credible fear, are subject to mandatory detention. After asylum seekers are found to have credible fear, ICE may exercise its prosecutorial discretion to release the asylum seekers on bond or parole pending immigration proceedings.

In January 2010, DHS, Immigration and Customs Enforcement (ICE) implemented a new policy to parole arriving asylum seekers. The authority for parole is found in 8 CFR Sec. 212.5, which allows for arriving aliens who pose neither a flight risk nor a risk of absconding to be paroled into the United States on a case-by-case basis if there is an urgent humanitarian reason or a significant public benefit. Under this policy, asylum seekers whose fear of persecution is deemed credible by USCIS Asylum Officers are reviewed for eligibility for release from detention on parole. ICE agents are directed to parole asylum seekers with a credible fear of persecution if they can verify their identity and that they do not pose a security or flight risk. This determination is based on an individualized assessment of the circumstances of each asylum seeker's case.

Denials of parole are not entitled to judicial review by an immigration judge or federal court. The only recourse is to seek reconsideration by ICE of the parole request. Furthermore, arriving asylum seekers who are not found to have a credible fear remain in detention until they are removed from the United States.

Harmful Impact of Current Laws, Policy and Practice

Immigration detention negatively impacts asylum seekers in multiple ways. Detention impedes full, fair adjudication of valid claims by creating obstacles to obtaining legal counsel, hindering the ability to gather evidence in support of one's claim, and often forcing participation in court proceedings over a tele-video connection rather than in person. The psychological harm of detention on a survivor of persecution or torture has been well-documented.[1] In some situations, the hardship of detention may lead a bona fide asylum seeker to return to a country where he or she fears persecution or torture.[2]

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[1] "Tortured & Detained: Survivor Stories for U.S. Immigration Detention", Center for Victims of Torture, The Unitarian Universalist Service Committee, and the Torture Abolition and Survivor Support Coalition, International, Nov. 2013; "From Persecution to Prison: The Health Consequences of Detention for Asylum Seekers", Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, June 2003.

[2] "Unlocking Liberty: A Way Forward for U.S. Immigration Detention Policy", Lutheran Immigration and Refugee Service, Oct. 2011 at 22.

The shortcomings and overly harsh response of the current system are illustrated by the following story of an afghan asylum seeker who fled persecution by the Taliban on account of his assistance to the U.S. Army.

> To protect his family and save his own life, **Ahmad fled his home country of Afghauistan after being targeted by the Taliban as a "U.S. loyalist" for providing translation assistance to the U.S. Army in 2002**. When he came to the United States seeking protection and attempted to enter with a false passport, **he was detained. He claimed asylum and was found to be eligible**; he met the refugee definition, he was credible, and he established a well-founded fear of persecution if he returned to Afghanistan. Nevertheless, an immigration judge denied his initial asylum application because he did not attempt to relocate within Afghanistan before escaping to the United States. Ahmad appealed his case. Because he was considered an "arriving alien," he was not eligible for a custody determination before a judge. **As an asylum seeker who had establisbed a credible fear of persecution, he was eligible for parole, but ICE determined he was a flight risk because he lacked community ties. Ahmad remained in detention for more than a year before he was granted asylum and released from detention.** Ahmad was a perfect candidate for a community-based ATD program that could have provided him the support he needed while fighting his case without imposing severe restrictions on his liberty and wasting valuable taxpayer money.[3]

Need for Prosecutorial Discretion

Federal immigration laws and policies should not use a blanket approach for reaching detention determinations. Such one-size-fits-all enforcement methods have led to more individuals being detained than is necessary to meet the goal of immigration detention—compliance with immigration proceedings. Immigration officials instead should utilize discretion based on individual circumstances when making detention determinations.

The use of prosecutorial discretion is a longstanding and non-controversial principle of law enforcement that allows officers and agents to prioritize their actions and expenditures and that both the Supreme Court and Congress have recognized as a legitimate exercise of executive authority. To achieve principles of good governance, the exercise of discretion must be consistently and transparently utilized. Parole for arriving asylum seekers is one policy initiative that meets these standards.

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[3] Unlocking Liberty at 42.

Recommendations

LIRS's expertise, experience, and compassion from decades of serving newcomers inform our advocacy for just, humane treatment of people who seek protection in the United States and inspire our call to end the use of unnecessary detention. We support the current ICE parole policy for arriving asylum seekers for the following reasons:

- Release of arriving asylum seekers on parole following an individualized assessment allows the government to comply with its responsibility under immigration laws, meet its humanitarian obligations, and reduce the financial burden to taxpayers.
- Individualized assessments protect against arbitrary detention. Assuming that detention is necessary for all individuals fleeing persecution violates international laws and conventions. The ICE parole policy assesses the need for detention in each arriving asylum seeker's case based on the unique factors facing each individual. Individual assessments protect against unjustifiable deprivations of liberty.
- The parole policy upholds the United States' obligations under the United Nations Refugee Convention to ensure that individuals are not detained for longer than necessary to achieve the legitimate government goal of verifying identity and mitigating flight risk or danger to the community.
- A policy of paroling individuals found to have a credible fear of persecution reduces negative long-term consequences for mental and physical health caused by detention and improves the ability of these individuals to integrate into society upon release.

LIRS urges the United States government to maintain robust protections for asylum seekers and others fleeing persecution and to avoid immigration detention unless it is determined to be necessary based on individualized assessments of each individual. We further support increasing access to alternatives to detention for migrants and refugees that meet the government's need with less deprivation of liberty.

For additional information, please see our fact sheet on asylum and asylum-seekers or contact Brittney Nystrom, LIRS Director for Advocacy at bnystrom@lirs.org or 202.626.7943.

HIAS

Statement of Mark Hetfield, President & CEO

Submitted to the Committee on the Judiciary of the U.S. House of Representatives Hearing on

December 12, 2013

"Asylum Abuse: Is it Overwhelming our Borders?"

The opportunity for refugees to seek safe haven is a fundamental component of American humanitarian tradition, international legal principles, and U.S law, and it has saved many lives. The United States may not return people to places where they will face harm. In the aftermath of World War II, when the price for keeping doors closed to refugees was starkly clear, the international community adopted the 1951 United Nations Convention relating to the Status of Refugees, which to this day defines who is a refugee and what legal protection a refugee is entitled to receive and is the basis for U.S. refugee and asylum law.

In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA), which authorized immigration inspectors at land, sea, and air ports to "expeditiously remove" arriving non-citizens who lacked proper documentation to enter the United States. Once in "expedited removal" proceedings at a port of entry, the only way for an arriving non-citizen to be allowed to consult an attorney -- or to otherwise have his case reviewed before removal from the United States -- is to convince the immigration inspector that he has a fear of return. The arriving non-citizen is detained in jail-like conditions until an asylum officer decides that his fear of return is "credible."

This was a major change from prior law. Through 1996, anyone being "deported" or "excluded" from the United States had the right to see an immigration judge.

In 2004, the Bush administration announced the expansion of expedited removal authority to the interior as well. Since the 2004 reform, if a Border Patrol agent apprehends a migrant within 100 miles of the border and believes that the migrant entered within the last 14 days, DHS may summarily deport him.

In 2005, I directed a congressionally authorized study on expedited removal and credible fear proceedings for the U.S. Commission on International Religious Freedom (USCIRF). We were given unprecedented access to ports of entry, where we observed hundreds of inspections. The USCIRF study documented that, more often than not, DHS inspectors failed to follow their agency's own procedures designed to prevent erroneous removals of non-citizens. Although the USCIRF study did not include the Border Patrol, the Department of Homeland Security gives us no reason to believe that its officers at the border are any less prone to abusing their authority than DHS officers at ports of entry.

In FY2013, 27,546 asylum claims were filed in by non-citizens in expedited removal proceedings. These claims must be considered in context. The 2004 reform that gave rise to these credible fear claims actually shifted workload away from the courts, authorizing the Border Patrol to exercise deportation authority previously reserved for immigration judges. In 2012, the Border Patrol summarily deported 240,363 undocumented migrants, all of whom would have previously gone to immigration court. It seems that, for every one credible fear case that has been added onto immigration judges' docket, nine deportation cases have been taken over by the Border Patrol.

A non-citizen in expedited removal proceedings has no right to see a judge, consult a lawyer, or speak with any government official other than DHS law enforcement officers. Only if the migrant successfully expresses to the Border Patrol that he has a fear of return will he be allowed to consult an attorney and speak to an asylum officer. If the migrant is then able to establish to the satisfaction of the asylum officer that he has a "credible fear" of return, he will finally be able to see an immigration judge and apply for asylum. Otherwise, the migrant is deported.

What does a migrant apprehended by the Border Patrol gain by successfully claiming a "credible fear" of being returned to his home country? Not the right to work, nor the right to be freed from detention. Only the right to be considered for release from detention, and the right to see an immigration judge. Even then, the migrant often "sees" the immigration judge only on a TV screen, while sitting alone in front of a camera, in shackles.

Undocumented migrants who recently entered the country should be subject to an expedited removal procedure. However, the procedure should be fair and transparent. Expedited removal as it exists today takes place in a black box, with unchecked deportation authority by gun-wielding border patrol agents and immigration inspectors.

Since 2005, DHS's Customs and Border Protection has done little to address the recommendations of the USCIRF study to make expedited removal transparent and accountable. Expedited removal remains yet another dysfunctional component of our broken immigration system. I urge the Committee to focus on making the current system more fair and transparent.

UNITED STATES COMMISSION ON
INTERNATIONAL RELIGIOUS FREEDOM

STATEMENT OF THE

U.S. COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM

on

ASYLUM: CREDIBLE FEAR AND PAROLE PROCESSES

December 12, 2013

Robert P. George, Chair
Katrina Lantos Swett, Vice-Chair

As the House Judiciary Committee reviews the asylum process during a December 12, 2013 hearing, the U.S. Commission on International Religious Freedom (USCIRF) submits for the record a review of the Commission's work on asylum and the credible fear and parole processes.

USCIRF is an independent, bipartisan advisory body established by the 1998 International Religious Freedom Act (IRFA) to monitor religious freedom conditions around the world and make policy recommendations to the President, Secretary of State, and Congress. USCIRF is not part of the State Department or the Executive branch; it is led by nine private-citizen Commissioners who are appointed by the President and the leadership of both parties in the House and Senate. Five Commissioners are appointed by the party that holds the White House and four by the other party.

IRFA authorized USCIRF to investigate and report on the treatment of asylum seekers under the then-new process of Expedited Removal which had been enacted in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Under Expedited Removal, aliens arriving in the United States without proper documents can be returned to their country of origin without delay, but also without the safeguard of a hearing before an immigration judge (IJ). Aware of the critical importance of protecting individuals fleeing from persecution and concerned by the obvious risk that refugees—who often travel without proper documents—mistakenly might be returned to their persecutors, IIRIRA put in place special procedures for their protection. An alien claiming a fear of return is detained while a preliminary assessment (the "credible fear" determination) is made as to whether his or her case warrants consideration by an IJ. If credible fear is found, the asylum seeker is allowed to appear before an IJ, and may, at the government's discretion, be paroled (released) while his or her case is pending before the

IJ. If credible fear is not found, the alien is put back in the regular Expedited Removal process and removed promptly.

As authorized in IRFA, USCIRF conducted a major research study on these issues in 2003 and 2004, and released its findings in 2005 in the Commission's Report on Asylum Seekers in Expedited Removal (the Study). The Study identified serious flaws placing asylum seekers at risk of being returned to countries where they may face persecution and being detained under inappropriate conditions. To address these concerns, USCIRF issued recommendations, none of which required congressional action, to the relevant agencies in the Departments of Homeland Security (DHS) and Justice (DOJ). The recommendations were geared to help protect U.S. borders and ensure fair and humane treatment for bona fide asylum seekers, the two goals of the law that established the Expedited Removal procedure.

The flaws identified by the Study included: incomplete and unreliable records of initial interviews by immigration officers at ports and credible fear interviews by asylum officers; wildly varying case outcomes among different immigration judges and courts; wildly varying parole rates, perhaps in violation of DHS parole guidelines; and detention of asylum seekers in inappropriately punitive, jail-like conditions. The recommendations to remedy these flaws included: videotaping interviews and employing "testers" to ensure procedures are correctly followed; increased training and supervision of officials and review of decisions; permitting asylum officers to grant asylum at the credible fear interview stage in appropriate cases; codifying the existing parole guidelines into regulations and better documenting and monitoring parole adjudications; and modifying detention practices to better suit a non-criminal, asylum seeking population.

With respect to parole, the USCIRF Study found that the existing criteria—that the alien establish credible fear, community ties, identity, and no security risk—were appropriate but were being inconsistently applied. The Study experts heard stories of asylum seekers being detained for years and found widely varying release rates from city to city. The Study recommended that asylum seekers with credible fear who do not pose flight or security risks should be released, not detained, and that such a policy should be codified into regulations. Many asylum seekers have suffered trauma and abuse prior to arrival in the United States and detaining them after a finding of credible fear risks re-traumatizing them, including the possibility of long-term psychological consequences.

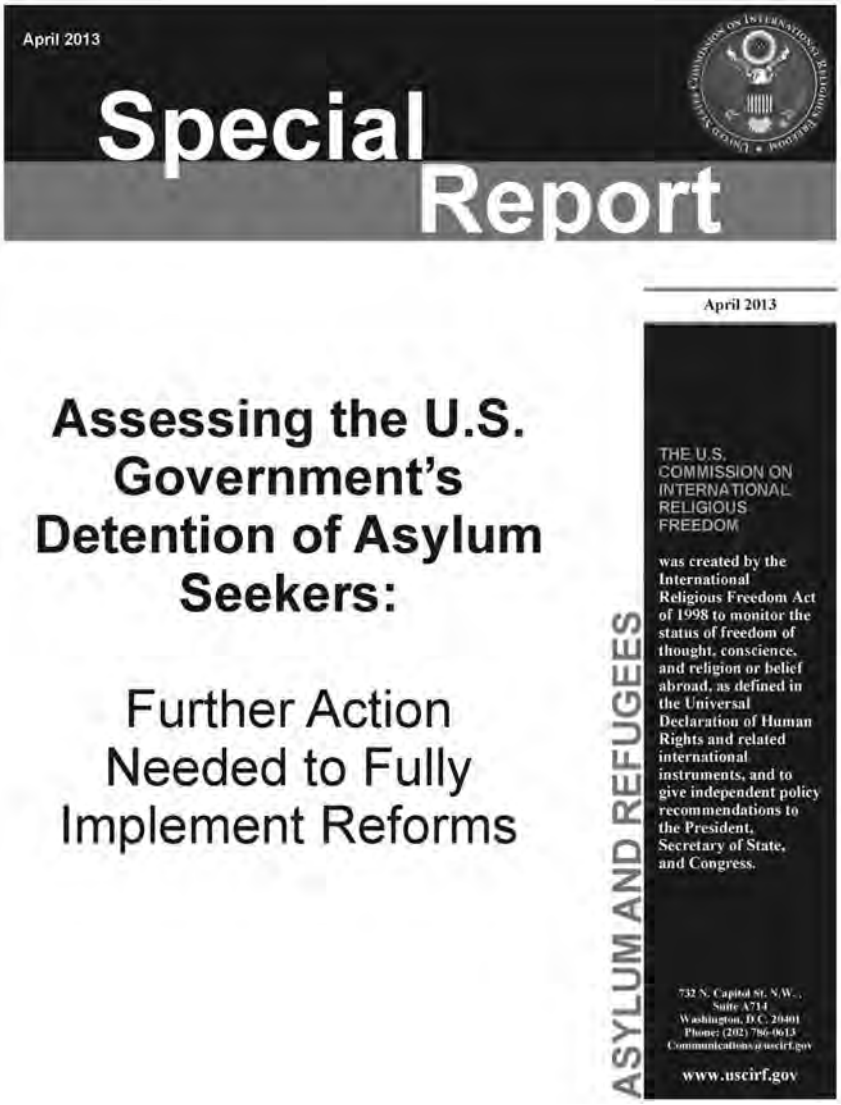
In 2007, contrary to USCIRF's recommendation, DHS' Immigration and Customs Enforcement agency (ICE) issued new parole guidelines that expanded the criteria that must be met to allow asylum seekers to be paroled, rather than codifying the existing criteria as the Commission recommended.

In December 2009, ICE issued new parole guidelines for asylum seekers in Expedited Removal that were in line with the Study's recommendations. Under the new directive, individuals found to have a credible fear of persecution are automatically considered for parole. Parole is not automatically granted, however. Under the new directive, parole may be granted only when asylum seekers establish credible fear, identity, community ties, and that they are not security risks. If the asylum seeker does not meet these long-established criteria, or if ICE determines there are "exceptional overriding factors," then parole is not granted. Additionally, the granting of parole does not automatically mean release. Frequently, a bond is set before release occurs. If

the bond cannot be met, then the asylum seeker is not released. In March 2013, ICE informed USCIRF that in FY 2012 80 percent of asylum seekers found to have a credible fear were granted parole. Among the reasons an asylum seeker with credible fear would remain detained are failure to substantiate community ties or inability to pay for a bond.

USCIRF continues to recommend that the 2009 parole process and criteria be codified into regulations. USCIRF also continues to conclude that parole provides vital protection for asylum seekers who have been found to have credible fear. USCIRF's ongoing monitoring, including visits in 2012 to detention centers, has found that, although ICE has made some positive changes since 2009 that allow it to house more asylum seekers in civil detention facilities, it continues to detain many asylum seekers in jail-like conditions that are inappropriate for non-criminals and present a real risk of re-traumatizing this vulnerable population. (For more information, see USCIRF's April 2013 report, *Assessing the U.S. Government's Detention of Asylum Seekers: Further Attention Needed to Fully Implement Reforms.*) USCIRF staff will visit additional detention centers in December 2013.

As Congress recognized when it created the Expedited Removal Process, the United States, in enacting and enforcing its immigration law, has a moral, humanitarian, and international legal obligation to provide protection for individuals fleeing religious and other forms of persecution. If the credible fear and parole processes are being abused, that should be ascertained and stopped, but the processes must be retained. These processes are vital to ensure that asylum seekers are not mistakenly returned to their persecutors or re-traumatized in detention.


April 2013
Special Report
April 2013
Assessing the U.S. Government's Detention of Asylum Seekers:
Further Action Needed to Fully Implement Reforms
ASYLUM AND REFUGEES
THE U.S. COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM
was created by the International Religious Freedom Act of 1998 to monitor the status of freedom of thought, conscience, and religion or belief abroad, as defined in the Universal Declaration of Human Rights and related international instruments, and to give independent policy recommendations to the President, Secretary of State, and Congress.
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USCIRF finds that while ICE has made progress toward implementing the reforms it announced in 2009, the U.S. government continues to detain asylum seekers under inappropriate conditions in jails and jail-like facilities. The number of years between the announcement of new policies and comprehensive implementation has hindered its efforts. There is a need to codify into regulations the announced parole process and criteria, under which most asylum seekers found to have credible fear of persecution are paroled rather than detained. More needs to be done to ensure that, when their detention is necessary, asylum seekers are housed only in civil facilities. In addition, USCIRF finds that further improvements are needed to expand detainees' access to legal information, representation, and in-person hearings.

In 2009, the Immigration and Customs Enforcement Agency (ICE) within the Department of Homeland Security (DHS) announced a series of immigration detention reforms designed to reduce the use of jails and jail-like facilities to house asylum seekers and the inconsistent application of parole policies to ensure that asylum seekers who pose no risk of flight or danger are not detained unnecessarily. The U.S. Commission on International Religious Freedom (USCIRF) welcomed the announcement as consistent with USCIRF recommendations issued in its 2005 *Report on Asylum Seekers in Expedited Removal* (hereafter referred to as the Study)[1] that would help ensure that asylum seekers subject to Expedited Removal[2] are not detained unnecessarily or under inappropriate conditions.

This report, based on USCIRF's detention facility site visits and additional meetings and research, finds that ICE has made progress toward implementing its announced reforms. However, USCIRF also finds that longstanding concerns remaining unaddressed. USCIRF continues to recommend that the new parole process and criteria, under which most asylum

[1] In 2003 and 2004, USCIRF conducted a major research study, as authorized by the International Religious Freedom Act of 1998 (IRFA), to examine whether asylum seekers subject to Expedited Removal were being detained under inappropriate conditions or being returned to countries where they might face persecution. USCIRF released its findings in the 2005 *Report on Asylum Seekers in Expedited Removal* (hereafter referred to as the Study). The Study found serious flaws in both the processing and detention of asylum seekers in Expedited Removal. To address these concerns, USCIRF issued recommendations, none of which required congressional action, to the relevant agencies in the Department of Homeland Security (DHS) and Department of Justice (DOJ).The Study is available at http://www.uscirf.gov/reports-and-briefs/special-reports/1892.html.

[2] The Expedited Removal process, established by 1996 immigration reform legislation, authorizes U.S. immigration officials to summarily return people arriving in the United States without proper documentation to their country of origin. Due to concerns that that bona fide asylum seekers, who often travel without proper documents, might mistakenly be returned to their persecutors, Congress included provisions to prevent the Expedited Removal of refugees fleeing persecution. Under these provisions, asylum seekers are detained while a determination is made if they have a "credible fear" of persecution. If credible fear of persecution is not found, the asylum seeker is put back in the Expedited Removal process and removed promptly. At least five separate agencies play a role in the Expedited Removal process. Within the Department of Homeland Security (DHS), Customs and Border Protection (CBP) first encounters aliens and identifies those subject to Expedited Removal, and from that group, those seeking asylum. DHS's Immigration and Customs Enforcement (ICE) agency is responsible for detaining asylum seekers, and its Citizenship and Immigration Services (USCIS) makes the credible fear determination. For those asylum seekers found to have a credible fear, DOJ's Executive Office for Immigration Review (EOIR) then reviews the asylum claims; immigration judges (IJs) hear the cases, and the Board of Immigration Appeals (BIA) reviews any appeals. With so many agencies and immigration officers involved in so many locations, coordination has been and remains a major challenge within DHS and between DHS and DOJ. In Fiscal Year (FY) 2011, the U.S. government deported 123,000 individuals through Expedited Removal.

seekers found to have credible fear of persecution are paroled rather than detained, be codified into regulations. While USCIRF welcomes ICE's establishment of civil detention facilities to house asylum seekers and other low level immigrant detainees, the Commission remains concerned that some asylum seekers are still not being held in civil facilities. USCIRF urges that all asylum seekers who must be detained – whether before or after a credible fear determination – be held in civil facilities. In addition, USCIRF finds that further improvements are needed to expand detainees' access to legal information, representation, and in-person hearings.

REFORMS OF DETENTION CONDITIONS FOR ASYLUM SEEKERS

The 2005 USCIRF Study found that the overwhelming majority of asylum seekers detained before their credible fear interview, and even after being found to have a credible fear, were detained under inappropriate conditions, in penal or jail-like facilities. Penal detention conditions risk re-traumatizing asylum seekers, and may lead some to prematurely terminate their asylum applications and return to their countries of origin, despite having credible fear. In some facilities, asylum seekers were living alongside U.S. citizens serving criminal sentences or criminal aliens, despite ICE detention standards forbidding the co-mingling of non-criminal detainees with criminals. In addition, the Study found asylum seekers were required to wear prison uniforms and were handcuffed and shackled like criminals. A 2009 internal DHS report into its own immigration detention system also expressed concern about the detention of asylum seekers under penal conditions and recommended that such detainees be held under civil conditions.

To ensure that asylum seekers subject to mandatory detention per Expedited Removal are held under appropriate conditions, USCIRF recommended that ICE not detain non-criminal asylum seekers under penal conditions. It was not until October 2009 that ICE took steps to implement USCIRF recommendations regarding the detention of asylum seekers, announcing plans to develop a new immigration detention system, with facilities based on civil, not penal, models, in locations with access to legal services, emergency rooms, and transportation. Specifically, ICE announced that, within three to five years, it planned to:

- design facilities located and operated solely for immigration detention purposes;
- revise its immigration detention standards to reflect the conditions appropriate for various immigration detainee populations;
- review its contracts with detention facilities to ensure that they comply with the new standards; and
- devise a risk assessment and custody classification tool to place detainees in appropriate facilities.

USCIRF SITE VISITS

Between July and December 2012, USCIRF staff visited 10 detention facilities around the country, touring the facilities and meeting with facility officials and detainees.[3] These detention centers included facilities following a penal detention model, facilities being reformed, and facilities following a civil detention model. They also included a mix of the various types of facilities ICE uses to house immigration detainees – facilities run by ICE directly, facilities run by local governments that either hold ICE detainees exclusively or hold a mix of ICE detainees and other detainees, and facilities run by private corporations. The facilities selected house a larger proportion of asylum seekers (29 percent of their population) than all facilities nationwide (12 percent of the overall population) However, as noted above, asylum seekers remain in jails and jail-like detention centers. ICE holds detainees at approximately 250 facilities nationwide, and only around 4,000 of ICE's 33,400 detention beds are in facilities appropriate to house asylum seekers.

The facilities visited were:

California
El Centro Service Processing Center, El Centro
Otay Detention Facility, San Diego
Mira Loma Detention Center,[4] Lancaster
James A. Musick Facility, Irvine

Florida
Krome Service Processing Center, Miami
Broward Transitional Center, Pompano Beach

New Jersey
Delaney Hall Detention Facility, Newark

Pennsylvania
Berks Family Shelter, Leesport

Texas
Karnes County Civil Detention Center
T. Don Hutto Residential Center[5]

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[3] USCIRF sincerely thanks the ICE officials in Washington DC and the various cities, as well as the detention center officials, who facilitated these visits, showed us the facilities, answered our questions, and provided information. USCIRF also is grateful to the 62 detainees at seven facilities who volunteered to speak with USCIRF about their experiences in detention and in the legal process.

[4] In October 2012, after the USCIRF staff visit, it was announced that as of November 2012, Mira Loma would no longer house ICE detainees.

[5] Krome, Broward, Otay Mesa, Mira Loma, and Berks were among the 19 facilities that the researchers surveyed and/or visited for the original Study.

CONDITIONS AT DETENTION FACILITIES

USCIRF notes ICE's positive moves to house more asylum seekers under non-penal conditions. In particular, USCIRF welcomes the establishment of four civil detention facilities that house asylum seekers and other low level immigrant detainees. ICE opened two civil detention facilities, Delaney Hall Detention Facility in New Jersey and Karnes County Civil Detention Center in Texas (the latter of which was specifically designed and newly built for this purpose), moved some asylum seekers to more appropriate centers such as Broward Transitional Center in Florida; and instituted reforms in some existing facilities, including T. Don Hutto Residential Center in Texas.[6] According to ICE, asylum seekers represent the majority of individuals housed at Berks Family Shelter (55 percent), T. Don Hutto Residential Center (79 percent), and Karnes County Civil Detention Facility (71 percent).

Unfortunately, however, not all facilities housing asylum seekers are civil detention facilities. Only around 4,000 of ICE's 33,400 detention beds are in civil facilities. USCIRF visited a number of centers where asylum seekers and other low level detainees were housed with medium and high level detainees in the same facility and where all detainees, including asylum seekers, continue to be detained under inappropriately penal conditions. ICE initially planned to open additional civil detention facilities, and USCIRF urges the agency to move forward with these plans.

Best Practices for Civil Detention Facilities

- Replicate the physical structures of Karnes County Civil Detention Facility and Broward Transitional Center
- Allow detainees to wear their own street clothes
- Allow for 24 hour movement to specified common areas
- Allow Internet access to approved sites, or use the American Library Association filtering guidelines
- Utilize electronic census or headcounts
- Hold regular town hall meetings with detainees
- Expand recreation and programming activities

CIVIL DETENTION FACILITIES

USCIRF visited detention facilities dedicated to low level detainees, including asylum seekers, such as Broward Transitional Center in Florida, Karnes County Civil Detention Center and T. Don Hutto Residential in Texas, Berks Family Shelter in Pennsylvania, and Delaney Hall Detention Facility in New Jersey. Despite differences between these facilities, all were noticeably less penal than those visited with mixed risk populations.

Freedom of Movement: The greatest difference between facilities dedicated to civil detention centers housing low level detainees and those housing mixed populations is the greater freedom of movement enjoyed by detainees at civil detention centers. At these facilities, detainees can move, unescorted and relatively freely, between many areas within the facility. This freedom of movement allows detainees to access indoor and outdoor recreation areas, libraries, medical units, eating

[6] Before the 2009 reforms, Hutto was used to detain both families and low-level female detainees. It now houses only low-level female detainees. Families are now detained at Berks, in Pennsylvania.

areas, and other areas without having to walk through security fencing or centrally locked doors or ask a guard's permission. These facilities still impose some restrictions, for example some areas remain off limits to residents without an escort and residents are require to be at specified locations at certain times for census or head counts. Only two facilities USCIRF visited, Karnes and Berks, allow less restricted movement 24 hours a day; the other facilities allow freedom of movement during "lights on" hours.

Activities: The civil detention facilities also allow increased opportunities for recreation time and provide more extensive activities programs for detainees. At all of the civil detention facilities USCIRF visited, detainees can access indoor and outdoor recreation areas during periods allowed for freedom of movement. These areas include outdoor soccer fields or volleyball or basketball courts and areas for indoor activities such as television, law and leisure libraries, religious services and studies, and exercise, language, GED, art, life skills, or music classes. Two facilities allow internet access.

Privacy: These facilities also offer detainees greater privacy. With the exception of T. Don Hutto Residential Center, bedrooms and common areas are in separate areas of the facilities. Each bedroom sleeps two to eight people, instead of the large dorm-style bedrooms of 50-100 persons of the non-civil facilities. Additionally, private showers and toilets are either behind closed doors in the bedrooms or blocked by full-length privacy curtains in the common areas. The only exception to private bathrooms is Delaney Hall Detention Facility, where toilets and showers are in a dormitory-style shared bathroom, showers are open, and the toilets only have half-length doors. While the bathrooms at Delaney Hall are an improvement over those at non-civil detention facilities, they do not afford the same privacy detainees enjoy at other civil detention centers.

Personal Freedoms: The civil detention facilities also afford greater personal freedoms to detainees than at other facilities. While only the Hutto and Berks facilities allow residents to wear street clothes, uniforms at the other civil facilities also are less penal with t-shirts and sweat suits being provided, as opposed to color-coded prison-like jumpsuits. At the time of USCIRF's initial Study, Broward allowed detainees to wear street clothes, but this is no longer the facility's policy. The low level facilities also allow for contact visits between detainees and their lawyers or detainees and their families. Some facilities, such as Karnes, have a children's play area for family visits.

Jail-like Configuration: Although noticeably less restrictive and providing detainees with greater freedoms, the civil detention facilities still maintain some penal aspects, such as perimeter fences, razor wire, barbed wire, or concertina coils, and locked entry doors as well as an extensive use of video and sound monitoring throughout the facilities. Guards still are posted throughout these facilities, although they wear khakis and polo shirts rather than correctional officer uniforms. Headcounts or census counts also occur at every facility, some as many as eight times daily. Living quarters also are searched, either when issues arise or are routinely scheduled. Finally, despite attempts to brighten up their spaces with wall murals, the enclosed physical structures of Hutto and Delaney Hall, with little natural light, provide a penal, not civil, feeling. Broward and Karnes, with housing and common rooms facing an open courtyard and a lot of natural light, feel less penal.

MIXED LEVEL POPULATION FACILITIES

Despite ICE's efforts to move all asylum seekers to more appropriate civil detention facilities, USCIRF found that ICE continues to house mixed level populations, including asylum seekers, in its detention facilities. As previously noted, the majority of asylum seekers remain detained in jails and jail-like facilities. These facilities are much more restrictive and penal for all detainees.

Freedom of Movement: At non-civil detention facilities with mixed level detainees, asylum seekers and other low level detainees are granted little or no freedom of movement. Armed guards escort all detainees to different areas of the facility, whether recreation areas, medical units, or cafeterias. Additionally, detainees are given set and limited times for recreation, meals, or law library visits. In many of these facilities, outdoor recreation time for all detainees is limited to only one hour per day, regardless of risk level, and outdoor space is limited to a concrete slab outside the dorm area. Little or no programming or activities are offered. The facilities also have placed numerous security barriers between different areas, including centrally locked doors and barbed wire fencing. At one facility, Otay Detention Facility, meals are held in the dorm rooms. At another facility, El Centro, all detainees are subject to pat downs after meals.

Privacy and Personal Freedom: Less freedom of movement at these facilities corresponds with less privacy and personal freedom. Detainees are assigned to open dorm-style bedrooms housing 50 to 100 persons. Within these dorm rooms, showers and toilets are open. Other than the one hour recreation time outside the dorm and the specific time slots allotted for meals, visitation, library visits, and religious services, recreation opportunities are limited to game tables and TVs within the dorms. Furthermore, all detainees are required to wear prison-like jumpsuits with colors corresponding to their risk level: often blue for low, orange for medium, and red for high. However, some facilities did make efforts to distinguish different risk level populations, with low level detainees granted more freedom. For instance, at James Musick and Mira Loma in California, low level detainees are allowed to move within the facility without an escort and given a longer recreation time, although armed guards still monitor their activities.

Prison-like Conditions: All of the non-civil, mixed level population facilities USCIRF visited are extremely secure. Perimeters are secured with fencing, razor wire, barbed wire, or concertina coils and multiple locked doors. Armed guards and secured doors block access to different facility areas, such as living rooms or cafeterias, and video and sound monitoring is used extensively throughout the facilities. Sleeping quarters constantly are surveilled by sound and sight either by guards being posted in the dorms or electronic monitoring used. Headcounts or census counts occur at every facility, some as many as eight times per day. Searches of living quarters are a common practice and pat downs also are frequent.

DETENTION GUIDELINES

RISK CLASSIFICATION ASSESSMENT

The Risk Classification Assessment tool (RCA) provides criteria and a scoring system to guide ICE officials in deciding whether an alien should be detained or released. The RCA also is used

when determining the appropriate level of community supervision if released or custody classification if detained. The classification system places all immigrants detained in ICE's system, including asylum seekers, into one of three levels, from low to high, corresponding to security risks in their backgrounds. Low level detainees have no criminal backgrounds or have been charged with only minor offenses, whereas high level detainees have serious criminal charges.

The RCA has allowed ICE to identify asylum seekers and other immigrant detainees who are low risk and house them under less restrictive, less penal conditions. While the RCA was rolled out in six phases across the country between July 2012 and January 2013, DHS does not track specifically where asylum seekers are detained. Asylum seekers generally are low level, according to ICE officials.

DETENTION STANDARDS

In 2011, ICE announced its new Performance Based National Detention Standards (PBNDS), a guidebook of rules and regulations for the detention of all immigrant populations in its control. The new standards, which slowly are being implemented, are an improvement over the 2008 Performance Based National Detention Standards. They expand access to medical, mental health, legal, and religious services; institute an extensive complaint process; and increase visitation and recreation opportunities.

Nevertheless, the new standards have not yet been fully implemented and continue to be based on a penal, not civil, model. ICE should develop civil detention standards to regulate asylum seekers and other low level immigrant detainees and civil detention facilities, rather than continuing to use penal-based detention standards for these populations and centers.

SPECIAL TRAINING FOR STAFF

USCIRF repeatedly has expressed concern about detention facility staffs' lack of awareness of and training on the special needs and concerns of asylum seekers and/or victims of torture. This concern was reinforced during the USCIRF site investigations, as staff at only two facilities toured by USCIRF indicated that they had received specific training. Furthermore, they said that the training they did receive addressed only cultural sensitivity issues, not how to interact with asylum seekers and/or victims of torture.

To address this concern, USCIRF recommends that ICE train detention center personnel to work with non-criminal, psychologically-vulnerable asylum seekers. In 2007, ICE and the DHS Office of Civil Rights and Civil Liberties jointly released a training module on cultural awareness and asylum issues for detention officers. USCIRF welcomed this module, its availability to all USCIS staff, and its being integrated into some CBP training programs. This training, however, is not mandatory for intergovernmental service agreement (IGSA) staff, who work at facilities where more than 50 percent of asylum seekers are held. USCIRF also welcomes the more specialized training ICE provides to on-site Detention Monitors, including curricula on *Asylum Seekers in Detention* and on interacting with culturally- and religiously-

diverse populations and victimized populations. This training should be expanded to include all ICE and contract officers who interact with detainees.

LEGAL PROCESS ISSUES

LOCATION AND ACCESS TO REPRESENTATION

The rural locations of many of the facilities where asylum seekers are detained continue to make it very difficult, as a practical matter, for individuals to obtain legal advice. Of the civil detention facilities USCIRF visited, most are in remote areas, with the Broward Transitional Center and Delaney Hall Detention Facility close to Miami and Newark/New York being exceptions. Karnes County Civil Detention Center, the new, purpose-built civil facility, is an hour's drive from San Antonio. Several of the mixed-level facilities are particularly far; El Centro Service Processing Center, for example, is a two hours' drive from San Diego. According to the NGO Human Rights First, 40 percent of ICE's current bed space is more than 60 miles away from an urban center. It is critical that DHS and DOJ work together to ensure detained aliens in Expedited Removal, including those who have not had a credible fear determination, have access to legal service providers.[7]

Best Practices to Educate Asylum Seekers on their Legal Rights

- Mandatory, in person Know Your Rights Presentations
- Mandatory, in person meetings with Legal Orientation Program representatives

Very few of the detained asylum seekers with whom USCIRF met when visiting facilities were represented by counsel, and many complained that they did not understand the complex immigration law and process. Lack of counsel not only disadvantages the detainees but also burdens the system, since unrepresented cases are more difficult and time consuming for adjudicators to decide.

REMOTE HEARINGS

Remote locations and a shortage of immigration judges mean that more hearings, including merits hearings, are now being conducted by video teleconference (VTC), not in person. This raises fair-hearing and effective-representation concerns. With the judge and lawyers in one place and the asylum seeker in another, both the assessment of credibility and lawyer-client consultations are made more difficult. Karnes was built with an in-house courtroom, but it is not being used due to the distance from major cities. Conversely, a VTC is used for hearings at Delaney Hall, despite its urban location in New Jersey.

Similarly, overburdened asylum officers and long distances to detention facilities delay credible fear interviews and lead to more such interviews being done by phone or VTC. Credible fear interviews are required to occur within 10 days to two weeks, but as of June 2012, according to

[7] Asylum seekers represented by *pro bono* attorneys are granted asylum at higher rates than unrepresented asylum seekers. Furthermore, increasing the availability of *pro bono* legal services for the credible fear process not only provides detained asylum seekers with legal advice, but also improves efficiency and reduces detention costs by increasing the number of asylum seekers who chose not to pursue their claims after consultation with counsel.

ICE, it was taking three months at Karnes. By USCIRF's August visit to Karnes, however, this timeframe had been reduced to three weeks.

RIGHTS INFORMATION

To help increase detainees' access to legal information and representation, DOJ's EOIR administers a Legal Orientation Program (LOP) carried out in partnership with non-governmental organizations (NGOs). At the time of the 2005 Study, the LOP operated in only seven detention facilities, and one of the Study's recommendations was to expand it. Currently the LOP program, which involves both materials and meetings with NGO representatives, is now in 25 facilities and its materials are available in all facilities. Nevertheless, the full program still reaches only a small percentage of ICE's total facilities and detainees.

Detainee awareness of the availability of legal information varied. All of the facilities visited show a "Know Your Rights" video on screens around the facility, particularly in the intake area. Even so, some asylum seekers with whom USCIRF met did not recall seeing the video, and some told USCIRF that they were unaware of the LOP materials or NGO sessions. Regular town-hall meetings with facility officials, as occur at Broward Transitional Center and T. Don Hutto Residential Center, would provide a way to highlight this and other important issues. ICE told USCIRF that in addition to the expanded self-help legal materials currently at facilities, the agency is looking to increase access to Lexis/Nexis and other legal services, and that it would welcome expanded availability of LOP and other legal rights presentations. ICE also told USCIRF that they are working with the American Bar Association on a written guide to the "Know Your Rights" video that would help reinforce its information.

PAROLE GUIDELINES

The Expedited Removal process allows for an asylum seeker found having a credible fear of persecution to be released from detention while his or her case is pending before an immigration judge (IJ). USCIRF has recommended that asylum seekers with credible fear who do not pose flight or security risks should be released, not detained and that such a policy be codified into regulations. Asylum seekers may have suffered trauma and abuse prior to arrival in the United States and detaining them after credible fear interviews may be re-traumatizing, with long-term psychological consequences.

In December 2009, ICE issued new parole guidelines for asylum seekers in Expedited Removal in line with the Study's recommendations.[8] Under the new directive, individuals found to have a credible fear of persecution are automatically considered for parole, and parole may be granted once asylum seekers establish credible fear, identity, community ties, and that they are not security risks, unless there are "exceptional overriding factors." The directive also established procedures for informing all asylum seekers of their right to parole, documenting parole decisions, and reviewing and reporting on adjudications. ICE reports that, under the new guidelines, in fiscal year 2012 80 percent of asylum seekers found to have a credible fear were

[8] In November 2007, ICE issued a parole directive expanding the qualifications to parole to include credible fear, community ties, lack of security risk, and an undefined "public benefit," contrary to USCIRF's recommendation.

granted parole. Among the reasons an asylum seeker with credible fear would remain detained are failure to substantiate community ties or to pay for a bond.

RECOMMENDATIONS

USCIRF finds that ICE has made progress toward implementing its announced reforms. However, the number of years between the announcement of new policies and uniform implementation has hindered its efforts. There is a need to codify into regulations the announced parole process and criteria, under which most asylum seekers found to have credible fear of persecution are paroled rather than detained. More needs to be done to ensure that asylum seekers, when detained, are housed in civil facilities. In addition, USCIRF finds that further improvements are needed to expand detainees' access to legal information, representation, and in-person hearings.

Specifically, USCIRF recommends:

- ICE should codify the 2009 parole directive into regulations, and should continue to document and monitor parole decisions to ensure the directive's criteria are being properly applied;
- USCIS should permit asylum officers to grant asylum at the credible fear stage for asylum seekers in Expedited Removal, as they can in other asylum cases;
- ICE should detain all asylum seekers who must be detained, whether before or after a credible fear determination, in civil facilities only;
- ICE should develop civil detention standards for civil facilities;
- ICE should ensure that staff at any facility where asylum seekers are detained are trained on dealing with asylum seekers and victims of torture;
- DHS and DOJ should continue to work to increase detainees' access to legal information and representation and to in-person hearings, including through the following measures:
    - DOJ should expand the full Legal Orientation Program (LOP) to all ICE detention facilities;
    - ICE should require every detainee to attend a screening of the Know Your Rights video and an in-person LOP session; and
    - USCIS and DOJ should ensure that credible fear interviews and asylum hearings are conducted in person; and
- Congress should provide additional funding to increase the number of USCIS asylum officers and DOJ immigration judges, and expand the Legal Orientation Program.

Detention Center Conditions

	Types of Detainees at Facility	Security Procedures at the Facility	Freedom of Movement	Privacy	Uniforms	Services, Recreation and Programming Opportunities
Berks Family Shelter	alien families w/out criminal convictions	entry to facility is locked; cameras and 24 hour lighting in common areas; searches of living areas only if items missing; no headcounts	24/7 freedom of movement; detainees can access non-housing units freely; no escorts are required	large rooms changing with numbers of other detainees depending on family sizes; toilets have doors and showers have curtains; detainees can be alone in room	no uniforms	extended outdoor/recreation time; no programmatic activities offered; field trips offered
Broward Transitional Center	alien men and women w/out criminal convictions	entry to facility is locked; fixed guards outside of living areas; cameras and 24 hour lighting in common areas; random searches of living areas; headcounts every 8 hours	freedom of movement during lights on hours; can access non-housing units during open hours; escorts required only to reach asylum offices; men and women kept separate	6 beds per room with private toilets and showers in rooms; detainees can be alone in room	men in orange, women in gray	recreation time during lights on, extended outdoor time; extended programmatic activities;
Delany Hall Detention Facility	alien men and women w/out criminal convictions	locked doors throughout facility; pat downs after visits and random after recreation; fixed guards outside of living areas; constant sight and surveillance of living areas; cameras and 24 hour lighting in common areas; random searches of living areas; headcounts 8 times a day	freedom of movement during lights on hours; can access non-housing units during open hours; escorts required to reach cafeteria and visitation rooms; men and women kept separate	10 beds per room; toilets have half doors and showers are open in bathrooms; detainees can be alone in room	maroon shirts, gray pants	recreation time during lights on; extended outdoor time; access to email

Detention Center Conditions						
	Types of Detainees at Facility	**Security Procedures at the Facility**	**Freedom of Movement**	**Privacy**	**Uniforms**	**Services, Recreation and Programming Opportunities**
El Centro Service Processing Center	alien men and women w/out criminal convictions and criminal alien men	locked doors throughout facility; pat downs after working and meals; fixed guards outside of living areas; constant sight and surveillance of living areas; cameras and 24 hour lighting throughout facility; random searches of living areas; headcounts 4 times a day	freedom of movement is restricted; detainees access non-housing units only during scheduled times; escorts are required at all times	large open dorm rooms with dozens of other detainees; toilets and showers are open; detainees cannot be alone in room	blue for low level detainees, orange for medium level detainees, red for high level detainees	1 hour outdoor/recreation time; no programmatic activities offered
Karnes County Civil Detention Center	alien men w/out criminal convictions	entry to facility is locked; fixed guards outside of living areas; cameras and 24 hour lighting in common areas; searches of living areas only if items missing; no headcounts but electronic check-in 5 times a day	24/7 freedom of movement; detainees can access non-housing units freely; no escorts are required	8 beds per room with private toilets and showers in rooms; detainees can be alone in room	blue pants, gray shirts	24 hour outdoor/recreation time; extended programmatic activities; 100 pre-approved Public Advocate internet sites

Detention Center Conditions

	Types of Detainees at Facility	Security Procedures at the Facility	Freedom of Movement	Privacy	Uniforms	Services, Recreation and Programming Opportunities
Krome Service Processing Center	criminal alien men	locked doors throughout facility; pat downs after working and meals; fixed guards outside of living areas; constant sight and surveillance of living areas; cameras and 24 hour lighting throughout facility; random searches of living areas	freedom of movement is restricted; detainees access non-housing units only during scheduled times; escorts are required at all times	large open dorm rooms with dozens of other detainees; toilets and showers are open; detainees cannot be alone in room	blue for low level detainees, orange for medium level detainees, red for high level detainees	1 hour outdoor/recreation time; no programmatic activities offered
James A. Musick Facility	alien men and women w/out criminal convictions and criminal men and women	locked doors throughout facility; random pat downs; fixed guards inside of living areas; constant sight and surveillance of living areas; cameras and 24 hour lighting throughout facility; random searches of living areas; headcounts 5 times a day	freedom of movement is restricted; detainees access non-housing units only during scheduled times; male detainees can access outside recreation area during lights on, but women only when female criminal prisoners are not outside; no escorts are required, but detainees movements are watched	large open dorm rooms with dozens of other detainees; doors on toilets but showers are open in bathrooms; detainees cannot be alone in room	lime green uniforms	at least 4.5 hours recreation/outdoor time; no programmatic activities offered

Detention Center Conditions

	Types of Detainees at Facility	Security Procedures at the Facility	Freedom of Movement	Privacy	Uniforms	Services, Recreation and Programming Opportunities
Mira Loma Detention Center	alien men w/out criminal convictions and criminal alien men	locked doors throughout facility; pat downs ; fixed guards outside of living areas; constant sight and surveillance of living areas; cameras and 24 hour lighting throughout facility; random searches of living areas; headcounts 5 times a day	freedom of movement is restricted; detainees access non-housing units only during scheduled times; no escorts are required if he has a pass, but detainees movements are watched	large open dorm rooms with dozens of other detainees; toilets and showers have doors; detainees cannot be alone in room	blue for low level detainees, orange for medium level detainees, red for high level detainees	1 hour outdoor/recreation time in main yards but can access dorm yards during lights on; extended programmatic activities
Otay Detention Facility	alien men and women w/out criminal convictions and criminal alien men	locked doors throughout facility; pat downs; fixed guards outside of living areas; constant sight and surveillance of living areas; cameras and 24 hour lighting throughout facility; random searches of living areas	freedom of movement is restricted; detainees access non-housing units only during scheduled times; escorts are required at all times	large open dorm rooms with dozens of other detainees; toilets and showers are open; detainees cannot be alone in room	blue for low level detainees, orange for medium level detainees, red for high level detainees	1-1.5 hours outdoor/recreation time; no programmatic activities offered
T. Don Hutto Residential Center	alien women w/out criminal convictions	entry to facility is locked; fixed guard in housing unit; constant sight and surveillance in housing unit; 24 hour lighting; cameras in hallways and cafeteria; random searches of living areas; no headcounts but detainees check into dorm three times a day	freedom of movement during lights on hours; can access non-housing units during open hours; no escorts required for movement	2 beds per rooms; toilets in rooms behind privacy curtains; showers in common areas behind privacy curtains; detainees can be alone in rooms	no uniforms; detainees cannot wear revealing or tight clothing	recreation time during lights on; extended outdoor time; extended programmatic activities; 30 minutes internet daily

Statement for the Record

House Committee on the Judiciary

Asylum Abuse: Is it Overwhelming our Borders?

December 13, 2013

The National Immigration Forum (the Forum) works to uphold the tradition of the United States of America as a nation of immigrants. The Forum advocates for the value of immigrants and immigration to the nation, building support for public policies that reunite families, recognize the importance of immigration to our economy and our communities, protect refugees, encourage newcomers to become new Americans and promote equal protection under the law.

The National Immigration Forum thanks the House Judiciary Committee(the Committee) and the Subcommittee on Immigration and Border Security (the Subcommittee) Committee for addressing immigration reform and we urge it to work towards advancing reform legislation in the coming months, including legislation that provides an earned path to citizenship.

Introduction

Over this past year, the Committee and the House Homeland Security Committee have worked on several immigration measures that together reform many parts of our broken immigration system, but as yet have failed to address the issues of legalization and earned citizenship As the Committee enters 2014 it should keep in mind one of the key lessons learned from 1986, besides the need for additional future legal avenues in our immigration system, which is that all parts of our complex immigration system are interrelated and must be dealt with in a cohesive manner in order to avoid the results of unintended consequences.

While there have been attempts at immigration reform in the last several years, we believe the current conversation around immigration reform is different. In the past two years, an alliance of conservative faith, law enforcement and business leadership has come together to forge a new consensus on immigrants and America. These relationships formed through outreach in the evangelical community, the development of state compacts, and regional summits across the country. The rise of the conservative voice for immigration reform makes this debate fundamentally different from those of the past.

One year ago, in early December 2012, over 250 faith, law enforcement and business leaders from across the country came to Washington, D.C. for a National Strategy Session and Advocacy Day. They told policymakers and the press about the new consensus on immigration in America. In February 2013, to support these efforts, the National Immigration Forum launched the Bibles, Badges and Business for Immigration Reform Network to achieve the goal of broad immigration reform. In October of this year, to help achieve that goal, this network co-hosted "Americans For Reform," a two day event bringing over 600 conservative leaders in the business, faith and law enforcement communities from across the country to Washington, who met with where they held 185 meetings on Capitol Hill with mainly Republican offices.

We believe that this coalition of conservative voices, committed to reforming all parts of our immigration system, including securing the borders, providing legal avenues for future immigration and finding a firm, but fair means to allow the undocumented to get right with the law by paying fines, taxes and earning legal status that can lead to citizenship, can help the Committee, and the House of Representatives, chart a path forward toward broad reform of our immigration system.

We are a nation committed to freedom and respect for human dignity

Following World War II, the United States made a commitment to protect persecuted refugees and displaced persons fleeing oppression and war. Restrictive WWII era policies resulted in thousands of victims fleeing from persecution and anti-Semitism in Europe being turned away from our shores. At the end of the war, it became evident that there needed to be an organized and specific refugee rescue policy. The Displaced Persons Act of 1948, which allowed an additional 400,000 European refugees to resettle in the United States, marked a turning point in U.S. immigration policy and established a precedent for later refugee events.

The United States played a leading role in guiding the international community on refugee policy, drafting the 1951 Convention Relating to the Status of Refugees (CRSR). The CRSR defined who qualified as a refugee, set out the rights of individuals granted asylum, and the responsibilities of nations that grant asylum. According to the United Nations High Commissioner for Refugees, of the 441,300 asylum applications registered in 44 countries, the United States was the largest single recipient with 83,400 applications in 2012.[1]

[1] UNHCR "Asylum Levels and Trends in Industrialized Countries 2012" http://www.unhcr.org/5149b81e6.html

The vast majority of asylum cases come from foreign nationals with documentation of fleeing despotic regimes, religious persecution, and other harms that threatened their lives or well-being. For many of these people, a ticket home is a death sentence.

Offering asylum to persecuted individuals reflects the ideals of a nation committed to freedom and respect for human dignity. The Forum believes that the Subcommittee should continue the exemplary tradition of protecting persecuted individuals and further work to protect those fleeing persecution by reforming the immigration system.

The Current Asylum System

The current asylum system in U.S. immigration law is intended to promote a well-functioning process to ensuring that only individuals truly fleeing persecution are granted protective status while those who would abuse the system are weeded out. All foreign nationals seeking asylum in the U.S., whether at the border or after entering the U.S., undergo a through process before they are granted asylum.

Foreign nationals may apply for asylum with the Department of Homeland Security's (DHS) United States Citizenship and Immigration Services (USCIS) after arrival into the country or they may seek asylum before a Department of Justice (DOJ) Executive Office for Immigration Review (EOIR) immigration judge during removal proceedings. To establish eligibility for asylum, the burden of proof is on the foreign national to show that she faces a significant possibility of persecution based on race, religion, political affiliation or membership in a particular social group if that person is returned to her country of origin. In adjudicating such cases, immigration officials consider not only the credibility of the testimony provided but also perform a thorough security and background investigation of the asylum seeker. Through this process, immigration officials the attempt to verify the individual's identity and confirm any information they have provided supporting their claim, as well as validate any documentation provided by the asylum seeker in support of their application.

This process is even more stringent for asylum seekers who arrive at the border without valid records or with false documents. This is a common occurrence since many true asylum-seekers flee their countries with very little possessions, or without the permission of their government. Those individuals are detained until an asylum officer has determined that they have a credible fear of persecution or torture and their identity can be confirmed, to the extent possible. For many asylum seekers, the period of detention may last until their asylum claims have been adjudicated.

We recognize that no system is perfect and there have been individual cases where undeserving applicants have been able to improperly remain in the United States longer

than they deserve. These cases are abnormal and represent only a miniscule fraction of those seeking asylum. We should not "govern by anecdote" in an attempt to make the system proof against even these rare and unlikely abuses. Doing so may risk sending valid asylum seekers back to the hands of their persecutors, a truly terrible result. Instead, we should find ways to improve the system to make it better at discerning those who have legitimate asylum claims. Even still, it is important to recognize that the overwhelming majority of invalid asylum claims are made by people attempting to come to the U.S. for economic or family reasons — not to commit crimes or to threaten our national security.[2] This further underscores the need to reform our immigration system to provide legal avenues that permit families to unite and allow employers to hire immigrant workers when appropriate. Doing so would reduce the incentive for those to abuse the asylum system to achieve these ends.

Credible fear applications are not overloading our borders

Credible fear review cases compose a small fraction of all asylum cases filed and are not overwhelming border officials. The vast majority of asylum claims do not go through the credible fear process. Indeed, foreign nationals only undergo a credible fear hearing if they express fear of persecution upon arriving at a U.S. port of entry or during expedited removal proceedings. An initial interview is conducted by a trained asylum officer to determine if the fear expressed by the individual is "credible" as a threshold for determining whether further review is necessary. If an asylum officer finds credible fear the foreign national is then referred to an EOIR immigration judge for a hearing *in the course of removal proceedings*. It is important to remember that the individual remains subject to removal if asylum is not eventually granted. A positive credible fear finding provides no status or benefit to the individual in and of itself. In 2012, there were a total of 44,170[3] cases of asylum filed in the United States.[4] Yet, USCIS conducted only 2,749 credible fear interviews at a port of entry[5] while immigration courts conducted a mere 750 credible fear proceedings in the same year.[6]

Further, asylum applications represent a small fraction of the overall admitted foreign nationals in the United States. Over the past decade, asylee adjustments have ranged from 1-9% of the total number of foreign nationals admitted into the U.S. In 2012, fewer than 30,000 people nationwide received asylum. In the same year, DHS granted 17,506

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[2] CRS Report RL 32621, *U.S. immigration Policy on Asylum Seekers*, By Ruth Ellen Wasem
[3] Asylum receipts for both affirmative (filing with DHS) and defensive (requesting asylum before an immigration judge).
[4] Asylum applications at any proceeding stage. - Executive Office for Immigration Review, Office of Planning, Analysis, and Technology, February 2013
[5] Department of Homeland Security report: Credible Fear Workload Report Summary http://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/2012/December%202012/Credible-Reasonable-workloadsFY12.pdf
[6] Executive Office for Immigration Review, Office of Planning, Analysis, and Technology, February 2013

asylum applications while immigration judges granted 11,978 representing a grant rate of only 56%.[7]

Asylum applications at a port of entry leading to credible fear cases represent fewer than 8% of the total number of asylum cases yet arguably compose the most vulnerable group of asylum seekers. Seeking asylum immediately upon entry, rather than after a period of time already in the United States, lends credence to claims of persecution or fear of return. The current process seeks to ensure only the most bona fide claimants are admitted. By contrast, the majority of asylum cases are filed by those already in the United States. The aforementioned data demonstrates the high bar credible fear cases must overcome in order to advance asylum claims. Moreover, the small number of such cases, while representing some of the most vulnerable groups, demonstrates a manageable border issue.

Reforming the Asylum System

If the Committee truly wishes to reform the asylum system it should first look at increasing resources for asylum officers and immigration judges. In the past five years, EOIR has not received a commensurate increase in resources to manage its growing overall case load. This has led to growing backlogs in the courts, and extended the time period for cases to be adjudicated. This in turn encourages some to attempt to delay their removal by filing fraudulent or frivolous claims.

Currently, there are 348,773 pending before the nation's immigration judges with the average case taking 567 days to be heard.[8] This in theory allows people to stay in the United States for a year and half before their case is even heard before an Immigration Judge, also costing the government millions of dollars in detention resources since many of these cases are detained. Increasing the capacity of the courts would seriously decrease the potential of the asylum system to be a magnet or incentive to stay in the United States.

Providing more resources to EOIR to hire additional justices and personnel will lower the backlog but also improve the quality of judicial hearings. The immigration courts perform a critical check on the enforcement authority of the Department of Homeland Security and must be funded at a level that allows them to perform their oversight role. When judges and courts feel rushed to complete cases due to inadequate resources, they cannot devote the time necessary to evaluate all of the aspects of a case, both those who

[7] See above. This number goes up to 64% when including withholding for removal.
[8] Transactional Records Access Clearing House (TRAC), "Average Time Pending Cases Have Been Waiting in Immigration Courts as of October 2013" October 2013, available at, http://trac.syr.edu/phptools/immigration/court_backlog/apprep_backlog_avgdays.php; "Immigration Court Backlog Tool" accessed December 10, 2013, available at, http://trac.syr.edu/phptools/immigration/court_backlog/.

are deserving and those who are not. The status quo is unsustainable both from a fiscal perspective and a justice perspective.

Conclusion

Asylum issues are less about the number of foreign nationals crowding our borders and more about the quality of the services provided. Abuses of the asylum system are increased when the regular immigration system does not match the needs of our economy for workers or the value our country places on families. It is not asylum that is backlogging our borders but rather a disjointed national immigration system. Moreover, credible fear review cases compose a small fraction of all asylum cases filed. Our immigration problem is a national problem deserving of a national, comprehensive approach.

The Forum urges the Committee to work towards advancing reform legislation in the coming months. We look forward to continuing this positive discussion on how best to move forward with passing broad immigration reform into law. The time is now and we are ready for reform.

CAIR Coalition
Capital Area Immigrants' Rights
Working to ensure that immigrants are treated with fairness, dignity and respect for their human and civil rights.
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Capital Area Immigrants' Rights (CAIR) Coalition
Statement for Hearing on Asylum Laws and Abuse

House Judiciary Committee

December 12, 2013

The Capital Area Immigrants' Rights (CAIR) Coalition brings together community groups, attorneys, volunteers and immigrants in the D.C. metropolitan area working to ensure that all immigrants are treated with fairness, dignity and respect for their human and civil rights. CAIR Coalition provides legal orientation services and representation to the men, women and children held in immigration custody in Maryland and Virginia. This population includes countless individuals who have fled unimaginable dangers in their countries of origin and seek safe haven in the United States.

The Credible Fear and parole processes are integral to our nation's ability to protect these most vulnerable individuals. As legal service workers providing information and orientation to hundreds of immigrants each year, we continue to be stunned by the stories we hear from men, women and children fleeing persecution of the most brutal kind. We are proud to have the privilege to inform these individuals of our nation's asylum laws, the Credible Fear process, and the possibility of parole for those who meet certain demanding standards. The asylum system is rooted in our nation's history, our international legal obligations, and our very identity as a nation of immigrants.

Nothing demonstrates the import of the asylum and Credible Fear laws and processes better than the stories of those who sought and received gravely needed protection. Below are the stories of three individuals who fled certain harm or death in their countries of origin, sought protection at the border, passed their Credible Fear Interviews, and remained in immigration detention through most or all of their removal proceedings. All three were ultimately granted asylum by the Immigration Court and live safely today as productive, contributing members of our society. CAIR Coalition provided legal orientation services to each of these men and referred their cases for representation by *pro bono* counsel.

Isaac[1]

Before coming to the United States, Isaac had been forced to spend the entirety of his adolescence and adulthood concealing his true identity. As a gay man in Uganda, he knew from a young age that revealing his sexual orientation to his family or community would result in arrest, severe harm, and perhaps even death. Homophobia in Uganda is so pervasive that the national

[1] Names and identifying information have been omitted to protect the privacy of the three men discussed, each of whom remain afraid of harm to themselves and their families following their flight.

parliament recently considered a bill that would legalize the summary execution of gay individuals. In 2011, a prominent gay rights activist was beaten to death with a hammer, with the police writing the crime off as a mere robbery.[2]

When Isaac's relationship with a man was made public against his will, his worst fears came true. The Ugandan police arrested Isaac, beat him, cut his arms with blades, and used electric wires to electrocute his genitals. When he was finally released he was wounded, severely dehydrated, and vomiting blood. Terrified and weakened, Isaac fled to the United States. At the airport, he revealed to a customs officer his profound fear of returning to Uganda. He was taken directly to immigration detention and granted a Credible Fear Interview, which he passed.

Isaac's request for parole was denied and he remained in detention in Virginia for nearly one year throughout his removal proceedings. Although he had no criminal history and posed no danger to the community, he had no close friends or family in the United States. His attorneys identified a shelter where he could safely stay, but Immigration and Customs Enforcement determined that this was insufficient for release. Finally, in early 2013, Isaac had his day in court and was granted asylum by the Immigration Judge, who found his fear of return to Uganda to be well founded. He lives today in the United States, finally free to live openly as a gay man.

Eric

Eric and his family have suffered gravely because of their participation in the political opposition in Burundi, a country denounced by Human Rights Watch for the widespread impunity it affords to the ruling party and its affiliates in their execution of politically motivated killings.[3] As a young adult, Eric lost his father to a brutal massacre of political opposition members. His fear for his own life escalated when he began receiving anonymous threats because of his political activism. When his young child was targeted for harm, Eric could no longer remain in Burundi and fled to the United States.

Eric expressed his fear on arrival at the border, and was taken from the airport to an immigration detention facility in Virginia where he would remain for nearly eight months. Eric's requests for parole were denied despite his lack of criminal history and the fact that his pro bono attorney had identified a shelter where he could remain upon release. Eric and his attorney presented his claim to the Immigration Judge in the summer of 2013, and the Immigration Judge agreed that his fear of return to Burundi was well founded. Subsequent to his asylum grant and release from detention, Eric first stayed at a temporary shelter facility where the staff was impressed by his commitment to developing his job skills and contributing to his new community. He has since transitioned to permanent housing and is working to save the money he needs to move to the countryside.

Joseph

Joseph was only in his early 20s when he was forced to flee his country of origin, Guinea, to seek safety in the United States. Joseph came from a religious Muslim family, but fell in love

[2] Jeffrey Gettleman, "Ugandan Who Spoke Up for Gays is Beaten to Death," New York Times (Jan. 27, 2011).
[3] "Burundi," Human Rights Watch World Report 2013, available at www.hrw.org.

with and wanted to marry a Christian woman. When he refused to enter into the Muslim marriage his family had arranged for him, Joseph knew his relatives would target him for retributive harm or death, with the Guinean police providing no protection. Afraid for his life, the only way Joseph could arrange to flee his home country was through the use of false travel documents.

Upon his arrival at the airport in the United States, Joseph was taken into criminal custody and criminally prosecuted for his use of false documents, despite his fear of return. After serving the sentence resulting from this prosecution, Joseph was transferred to immigration custody in Virginia. He passed his Credible Fear Interview, but his requests for parole were initially denied. After spending approximately four months in immigration detention, Joseph was paroled into the community. One month later, the Immigration Judge found his fear of return to be well founded and granted him asylum.

These stories are only three among many, and they are illustrative of the integrity and importance of our asylum and credible fear laws and the very real and profound impact they have on the lives of human beings in need.

NATIONAL
IMMIGRANT
JUSTICE CENTER
A HEARTLAND ALLIANCE PROGRAM

Statement of
Mary Meg McCarthy, Executive Director
Heartland Alliance's National Immigrant Justice Center

House Judiciary Committee
Hearing on "Asylum Abuse: Is it Overwhelming our Borders?"

December 12, 2013

Chairman Goodlatte, Ranking member Conyers, and members of the Judiciary Committee:

In recent months, there has been some debate about the reliability of the credible fear process as a means to prevent asylum fraud. As a national leader in immigration law and policy, Heartland Alliance's National Immigrant Justice Center (NIJC) appreciates the opportunity to submit testimony for today's hearing. We offer this statement in support of the existing credible fear process, but note the need for some improvements that will protect the ability of bona fide asylum seekers to obtain asylum in the United States. This testimony also addresses two components of the immigration system that undermine the U.S. government's legal obligations to refugees: (1) lack of access to counsel and (2) arbitrary detention.

NIJC is a non-governmental organization dedicated to safeguarding the rights of noncitizens. With offices in Chicago, Indiana, and Washington, D.C., NIJC advocates for immigrants, refugees, asylum seekers and victims of human trafficking through direct legal representation, policy reform, impact litigation, and public education. NIJC and its network of 1,500 pro bono attorneys provide legal representation to approximately 10,000 noncitizens annually. Since its founding 30 years ago, NIJC has defended the rights of noncitizens, particularly those held in immigration detention. NIJC conducts "Know Your Rights" presentations in immigration detention facilities, operates a detention hotline, monitors detention conditions, and provides legal support to detainees throughout the country. NIJC has witnessed the tremendous harm detention causes asylum seekers and how detention compromises their ability to present their asylum claims.

NIJC has played a major role in advocating for reform of the immigration system. As the co-convenor of the Immigration and Customs Enforcement (ICE)/NGO Enforcement and Detention Working Group, NIJC facilitates advocacy and open dialogue between ICE and human rights organizations, legal aid providers and immigrant rights groups. With a national membership of more than 100 NGOs, the Working Group advocates for the full protection of internationally recognized human rights, constitutional and statutory due process rights and humane treatment of noncitizens. NIJC also participates in the Asylum Working Group and was a founding member of the Asylum Litigation Working Group. These entities exist to monitor the creation and implementation of laws and policies that impact asylum seekers. NIJC's years of experience advocating on behalf of asylum seekers, from both policy and direct services perspectives, and collaborating with colleagues throughout the country and internationally, gives us a unique perspective on the immigration system and its relationship to U.S. obligations under domestic and international law.

The United States has a proud legacy of protecting people who have been persecuted. This country is a beacon of hope for people fleeing oppression and is a leading defender of human rights. The primary

vehicles through which nation-states assumed legal duties towards refugees are the 1951 Convention Relating to the Status of Refugees (Refugee Convention)[1] and the 1967 Protocol Relating to the Status of Refugees (Refugee Protocol).[2] These documents require nation-states to recognize as refugees anyone with a "well-founded fear" of persecution in their home countries, to accord refugees certain legal rights, and to refrain from returning them to countries where their safety would be threatened.[3] The United States ratified the Refugee Protocol[4] and in 1980, the United States enacted the Refugee Act to ensure compliance.[5] Since the Refugee Act was passed, legal protections for refugees in the United States have been significantly weakened. Today, refugees and asylum seekers face a system that is fraught with needless delay and unnecessary detention that often results in the deportation of bona fide refugees to countries where they face persecution, torture, or death.

This testimony provides an assessment of the current asylum system and its on-the-ground impact on individuals seeking protection in the United States and also provides recommendations to ensure that individuals seeking protection have access to asylum as guaranteed under domestic and international law.

I. The Credible Fear Interview Process is Sufficiently Robust, but Lack of Access to Legal Counsel Excludes Many Refugees

The Credible Fear Interview (CFI) is, in some asylum cases, a preliminary step in the lengthy and rigorous asylum review process.[6] When an individual is apprehended at or near a port of entry and does not have valid entry documents, he or she is usually subjected to the expedited removal process in which the individual is promptly deported without an opportunity to appear before an immigration judge. If the individual is apprehended at or near a port of entry without valid entry documents and expresses a fear of return, then the individual undergoes the credible fear process as an initial asylum screening. The CFI is the only way an individual who has a fear of return and faces expedited removal can avoid immediate deportation. An extensively trained asylum officer with U.S. Citizenship and Immigration Services (USCIS) conducts the CFI and issues an assessment that determines whether the asylum seeker will be permitted to submit a formal application for asylum. Receiving a favorable CFI decision does not guarantee asylum. Rather, it allows the asylum seeker to proceed with his or her protection claim before an immigration judge.

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[1] UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, UNTS vol. 189, p. 137 [hereinafter "Refugee Convention"].

[2] UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, UNTS vol. 606, p. 267 [hereinafter "Refugee Protocol"].

[3] "No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." Refugee Convention, art. 33-1, 189 UNTS 150.

[4] Although the United States did not sign the Refugee Convention, the Refugee Protocol includes by reference the rights and duties set forth in the Convention. Refugee Protocol, art. 2 ("The States Parties to the present Protocol undertake to apply Articles 2 to 34 inclusive of the Convention to Refugees as hereinafter defined.") The Refugee Protocol expanded these rights and duties to all refugees, whereas the Refugee Convention only applied to those displaced by the Second World War and its aftermath. Hereinafter, this statement cites to specific articles of the Convention when discussing the Protocol.

[5] *INS v. Cardoza-Fonseca*, 480 U.S. 421, 433 (1987)(citing "the abundant evidence of an intent to conform the definition of 'refugee' and our asylum law to the United Nation's Protocol to which the United States has been bound since 1968").

[6] Asylum seekers who are not eligible for the CFI process must undergo the Reasonable Fear Interview (RFI) process, which carries a higher burden of proof and results in a lesser form of protection called withholding of removal.

During the CFI process, asylum seekers are subject to mandatory immigration detention. If an asylum seeker receives a favorable CFI decision, he or she may be eligible for parole, meaning a release from immigration detention. Recently, some members of Congress have speculated that noncitizens abuse the CFI process to enter the United States on parole.[7] In our experience representing hundreds of asylum seekers annually, the CFI is critical to ensuring that bona fide asylum seekers are not subjected to the expedited removal process and deported without the opportunity to request protection. The CFI is a robust process that requires asylum seekers to prove a "significant possibility" exists that he or she can demonstrate past persecution or a well-founded fear of future persecution to an immigration judge. There is no presumption of credibility and the USCIS asylum officers receive extensive training to detect fraud and make credibility determinations.

When individuals do not fully understand the legal process or their rights, the CFI process is more likely to erroneously exclude bona fide asylum seekers rather than permit entry to fraudulent applicants. NIJC has seen a significant number of detained individuals who, because they did not understand their rights, were denied the opportunity to go through the CFI process or talked out of seeking asylum and were deported to countries where they continued to face persecution, only to flee once again to the United States and discover that their previous deportation orders made them ineligible for asylum.[8] The stories of Juan and Alba, two NIJC clients, demonstrate this issue:

> Juan is a 20-year-old man who, as a teenager in El Salvador, refused to join the Mara Salvatrucha gang because of his strong religious faith and a fundamental disagreement with the gang. Gang members harassed and threatened to beat him if he did not join. In May 2013, when he again refused to join the gang, a group of gang members beat and sexually assaulted him, telling him that he had to leave the town or they would kill him. He fled to the United States. When Juan was detained by the U.S. border patrol, he expressed his fear of returning to El Salvador. Despite the fact that Juan presented a legally viable asylum claim, ICE officers told him that pursuing asylum would only prolong his detention and delay his inevitable deportation. Without adequate legal counsel, he felt he had no choice and accepted his deportation without a CFI. Upon arrival in El Salvador, he stayed with a friend in another town to be safe, but after one month learned that the gang was looking for him. Juan quickly left El Salvador and was detained again at the U.S. border. Although an officer gave Juan a chance to express his fear during this second entry, his prior deportation order disqualified him for a CFI.
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> Alba, from El Salvador, fled a forced marriage to a man 50 years her senior. Immigration authorities arrested and deported her. At that time, she did not have access to a lawyer and did not understand that she had a right to seek asylum in the United States. After deportation to El Salvador, she was

[7] Due to the chronic backlog of non-detained immigration proceedings, a product of Congress' underfunding of the Executive Office for Immigration Review (EOIR) to match the massive expansion of enforcement appropriations, an individual placed in removal proceedings today will not get a hearing on his substantive claim for nearly four years. Accordingly, assertions that individuals who are paroled into the United States through the CFI process do not have valid claims are purely speculative since their cases will not even be considered until 2017.

[8] Individuals with prior removal orders are only eligible for RFIs rather than CFIs. Individuals who go through the RFI process are not eligible for asylum, and are subject to a higher standard to obtain "withholding of removal." While asylum seekers must demonstrate a "well-founded fear," "withholding" applicants must demonstrate that they are "more likely than not" to face persecution upon return to their native country. Unlike asylum, individuals who are granted "withholding of removal" are unable to apply for legal permanent residence and are not able to petition for family members. Moreover, a final order of removal for deportation remains for "withholding" recipients, meaning that if they travel outside of the U.S., they will not be allowed to return and their status may be more easily revoked.

beaten and hospitalized because of her sexual orientation. Following hospitalization and an ineffective police investigation, Alba attempted another entry in the U.S. and was again apprehended. She expressed fear and was referred to the immigration court to seek withholding of removal only because of her prior removal order. The immigration judge, applying the higher standard for withholding of removal, denied her request for protection. NIJC appealed her case and argued that Alba should have an opportunity to apply for asylum despite her previous expedited removal order because her opportunity to seek asylum was improperly foreclosed when she first entered the U.S.

II. Many Asylum Seekers Who Pass CFI Go On to Face Harmful Arbitrary Detention Without Review

In 2009, ICE issued a policy directive[9] that provides guidance to ICE officers regarding when they should exercise discretion to parole certain asylum seekers from detention after they pass the CFI. The directive was created to prevent the inhumane, long-term detention of men and women who seek asylum, while providing ICE with the discretion to set bond as a safeguard when it believes an asylum seeker may be a flight risk.

Noticeably absent from the recent debate over the CFI and parole process is how the 2009 policy directive plays a critical role in ensuring that asylum seekers have access to the legal, medical, and mental health resources they need to pursue their right to seek asylum under federal and international law. NIJC lawyers have witnessed firsthand the essential role the parole directive plays in ensuring the United States complies with its legal obligations towards asylum seekers.

Unfortunately, in recent years it appears that the arbitrary immigration detention bed mandate has been a driving factor in the custody decisions regarding asylum seekers. DHS has the exclusive discretionary authority to determine if an asylum seeker should be detained and DHS's decision is not subject to review, and asylum seekers who have passed CFI cannot petition an immigration judge for release from detention. This unreviewable detention of asylum seekers violates due process protections and the right of individuals to receive timely judicial review of the lawfulness of their detention.

Parole saves federal dollars by eliminating the bed space needed for asylum seekers. It also makes it more likely that asylum seekers will be able to access the legal counsel and medical and mental health services he or she needs to efficiently complete the asylum process and recover from the harm they are escaping.

Access to mental and medical health services ensures bona fide refugees have a fair chance at asylum

In addition to the poor detention conditions, isolation from family and community, and uncertainty about the length of confinement that all immigrant detainees face, detention is particularly harsh for asylum seekers. Many asylum seekers previously suffered persecution and torture that involved unlawful imprisonment. In fact, from October 2010 to February 2013, an estimated 6,000 survivors of torture seeking asylum were

[9] U.S. Immigration and Customs Enforcement (ICE), "Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture," Directive No. 11002.1, effective Jan. 4, 2010, http://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole_of_arriving_aliens_found_credible_fear.pdf

detained in detention facilities.[10] In immigration detention, asylum seekers are not only prevented from accessing the necessary mental and medical health services they need to recover from this trauma, but they are re-traumatized by the detention itself.[11] NIJC sees the impact on asylum seekers every day in its work as illustrated by the story of Marina and James:[12]

> Detention was extremely hard for married NIJC clients Marina and James, who fled Moldova after the Moldovan police brutally beat James for his participation in peaceful demonstrations against the Moldovan government. When they arrived at the airport in the United States, they promptly requested asylum and were detained. Despite passing the CFI, they remained detained for more than 20 days even though Marina, who was five-months pregnant, suffered from pregnancy-related anemia and could not receive appropriate pre-natal care in detention. Once ICE finally released them on parole, Marina and James were able to access the medical and mental health services they needed to care for themselves and their unborn baby, and to recover from the trauma they had endured in Moldova. They were also able to secure *pro bono* attorneys through NIJC. Based on the evidence presented by their attorneys, the immigration judge granted asylum to Marina and James. They are now rebuilding their lives in the United States.

Access to Legal Counsel is Critical to Ensuring the United States has a Strong and Efficient Asylum System

Under U.S. immigration law, individuals in removal proceedings do not have the right to appointed counsel. Government data and leading academic studies consistently show that detention and legal representation are significant factors in determining if a noncitizen is granted asylum or another form of relief. According to the New York Immigrant Representation Study spearheaded by the Honorable Judge Robert Katzmann of the Second Circuit, 78 percent of represented and non-detained individuals were granted relief, while only three percent of detained and non-represented individuals were granted relief.[13] Eighty-four percent of detained immigrants do not have attorneys. Among asylum seekers, only three percent prevail in their cases without legal counsel compared to 18 percent who have counsel.[14]

Given the stark disparities in grant rates, an asylum seeker's ability to be released from detention after passing a CFI is often the difference between receiving protection and being deported to a home country where he or she faces persecution. A successful asylum application requires considerable resources. The asylum seeker must gather country condition reports, primary documentary evidence, affidavits from witnesses in the home

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[10] Center for Victims of Torture, "Tortured and Detained: Survivor Stories of U.S. Immigration Detention," Nov. 2013, http://www.cvt.org/sites/cvt.org/files/Report_TorturedAndDetained_Nov2013.pdf.

[11] *See e.g.*, Physicians for Human Rights, "Punishment Before Justice: Indefinite Detention in the U.S.," 2011, https://s3.amazonaws.com/PHR_Reports/indefinite-detention-june2011.pdf; Center for Victims of Torture, "Tortured and Detained: Survivor Stories of U.S. Immigration Detention," Nov. 2013, http://www.cvt.org/sites/cvt.org/files/Report_TorturedAndDetained_Nov2013.pdf.

[12] Names have been changed to protect their identity.

[13] New York Immigrant Representation Study, "Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings, at 3 (Dec. 2011); Dep't of Justice, Executive Office of Immigration Review, "FY2012 Statistical Yearbook," at K2 (Feb. 2013), http://www.cardozolawreview.com/Joomla1.5/content/33-2/NYIRS%20Report.33-2.pdf

[14] Donald Kerwin, "Revisiting the Need for Appointed Counsel," *Insight* No. 4, Migration Policy Institute at 6, April 2005, available at http://www.migrationpolicy.org/insight/Insight_Kerwin.pdf.

country, and medical and psychological evaluations. It is nearly impossible for asylum seekers to gather such documentation from a detention cell, particularly without the help of competent legal counsel.

Attorneys were essential in the case of Amanuel, Solomon, Yohan, and Samuel, four young men from Eritrea, who were detained throughout their entire asylum process, despite passing their CFIs. These four men fled Eritrea after the Eritrean government imprisoned and tortured them because of their religious beliefs and opposition to the government. Although it is typically very challenging for detainees to obtain representation, NIJC was able to provide these men with *pro bono* attorneys. The attorneys were challenged by their limited ability to communicate with their clients and to gather evidence, but were able to gather supporting documents from abroad and witness affidavits to support their cases. Because these men had attorneys, they were able to overcome the barriers presented by their detention and utilize this evidence to demonstrate the strength of their claims. The immigration judge granted all four men asylum.

Detention Bed Mandate Contravenes Domestic and International Guidelines

Congressional appropriations require that ICE fill 34,000 beds daily in immigration detention centers nationwide.[15] This quota has steadily increased since its establishment in 2007.[16] The detention bed mandate compels ICE decisions on whether or not to release immigrant detainees – including asylum seekers – and prevents ICE from exercising discretion and fully implementing the 2009 parole directive. No other law enforcement agency is subject to a statutory quota on the number of individuals it must detain.

The mandate has prevented the government from expanding more humane and efficient alternatives to detention (ATD) that would allow asylum seekers who pose no risk to public safety to complete their asylum processing outside detention. These alternatives cost as little as 17 cents to $17 a day, a fraction of the $159 ICE spends to detain one person per day. Over the course of a year, immigration detention costs more than $2 billion; approximately $5.5 million each day. Taxpayers could save $1.44 billion each year – a nearly 80 percent decrease in detention spending – if ATDs were used more widely.[17] Alternatives to detention have received bipartisan support for their cost-savings from groups such as the Council on Foreign Relations' Independent Task Force on U.S. Immigration Policy, the Heritage Foundation, the Pretrial Justice Institute, the Texas Public Policy Foundation (home to Right on Crime), the International Association of Chiefs of Police, and the National Conference of Chief Justices.

III. Conclusion and Recommendations

The current CFI system was designed to ensure that the U.S. government does not deport individuals to countries where they would be persecuted. This system works most effectively when individuals have knowledge of their rights and have access to legal counsel. Some bona fide asylum seekers are discouraged from seeking asylum because they receive inaccurate legal advice or no legal advice. Others abandon their

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[15] Department of Homeland Security Appropriations Act, 2014. H.R. 2217, 113th Cong. (2013). Available at: http://www.gpo.gov/fdsys/pkg/BILLS-113hr2217rs/pdf/BILLS-113hr2217rs.pdf, see pp. 11, lines 14-19.

[16] Selway, W. & M. Newkirk. "Congress Mandates Jail Beds for 34,000 Immigrants as Private Prisons Profit." *Bloomberg*. Sept. 23, 2013. Available at: http://www.bloomberg.com/news/2013-09-24/congress-fuels-private-jails-detaining-34-000-immigrants.html.

[17] National Immigration Forum. "The Math of Immigration Detention." Aug. 2013. Available at: http://www.immigrationforum.org/images/uploads/mathofimmigrationdetention.pdf.

claims because being detained – sometimes for months or more – is unbearable. Those who attempt to pursue asylum from detention are disproportionately denied protection because they cannot access counsel and cannot adequately prepare their cases. USCIS asylum officers are extensively trained to evaluate claims and discern the credibility of applicants. Misguided attempts to place further limits on the credible fear process or restrict access to parole for asylum seekers will have dangerous consequences for men, women, and children who need legal protection in the United States to save their lives.

Furthermore, perpetuating the long-term incarceration of individuals who have fled persecution abroad and undergone the CFI process has economic and moral consequences for all Americans. Individuals who flee to the United States to escape trauma and torture often realize that remaining in detention for months or years while they fight their asylum cases is their only hope for survival. But locking them up runs contrary to American values at great cost to taxpayers.

Congress needs to improve the system to ensure that the current credible fear process is fully implemented and that individuals have the opportunity to secure protection. We urge Congress to pass laws to:

- Ensure that all individuals subject to expedited removal have the opportunity to express a fear of returning to their home countries, and that those who express such a fear have access to the credible fear interview process and information regarding their legal rights;
- Fully implement the 2009 ICE parole directive;
- Provide asylum seekers with the right to seek review of their detention by an immigration judge;
- Eliminate the detention bed mandate;
- Provide detained asylum seekers with access to legal representation; and
- Expand resources to the immigration courts to reduce delays and ensure due process

The 1980 Refugee Act provides critical due process protections for individuals fleeing persecution. As a nation committed to the rule of law, we must safeguard asylum protections to uphold America's commitment to protecting the persecuted.

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Statement of the American Immigration Lawyers Association

Submitted to the
Committee on the Judiciary of the U.S. House of Representatives
Hearing on "Asylum Abuse: Is it Overwhelming our Borders?"

December 12, 2013

The American Immigration Lawyers Association (AILA) submits this statement to the Committee on the Judiciary. AILA is the national association of immigration lawyers established to promote justice and advocate for fair and reasonable immigration law and policy. AILA has over 13,000 attorney and law professor members.

This statement addresses primarily the concerns of asylum seekers who are subject to the summary deportation procedure known as "expedited removal" that is applied to many individuals apprehended at or within 100 miles of a U.S. border. Though critics of the U.S. asylum system assert that even more stringent requirements should be placed on asylum seekers at the border, the fact is asylum screening at the border and security protocols are already extremely rigorous. Moreover, expedited removal restricts the opportunity for individuals to seek asylum and sometimes results in wrongful deportations of vulnerable individuals who have a well-founded fear of persecution. Our laws must balance the aims of border security without compromising protections for those seeking asylum.

Welcoming and protecting those fleeing persecution is a deeply rooted American value that has defined our country since its founding and is firmly established in our laws. In 1968, the U.S. acceded to the 1967 U.N. Protocol Relating to the Status of Refugees, which extends the obligation of *non-refoulement*, or the duty to not return a refugee to a country where their life or freedom would be threatened on the basis of certain grounds, an obligation that was first enshrined in the 1951 Convention Relating to the Status of Refugees.[1] Additionally, the U.S. is bound under the U.N. Convention Against Torture, to not return an individual to a country where the person would likely face torture. In 1980, the U.S. enacted the Refugee Act to bring its laws into compliance with international law and has continued to be a leader in the area of asylum and refugee protections internationally.

The U.S. asylum system still suffers from serious flaws that have compromised the protections it provides to asylum seekers. Most significantly, asylum seekers arriving at the border are often turned away and summarily deported by Border Patrol without the opportunity to obtain even a preliminary "credible fear" interview before an asylum officer. Thousands of asylum seekers are held in detention, often for extremely long periods over a year or more. The immigration courts are severely underfunded, preventing judges from hearing cases promptly and forcing asylum seekers to wait years.

[1] United Nations Treaty Collection, http://treaties.un.org/pages/ViewDetailsII.aspx?&src=UNTSONLINE&mtdsg_no=V~2&chapter=5&Temp=mtdsg2&lang=en

Expedited Removal and Credible Fear Interviews

In 1996 with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA), Congress gave broad authority to the federal government to deport certain individuals through a process called "expedited removal." Expedited removal severely truncated procedural protections for certain classes of noncitizens seeking admission to the U.S. Under current practice, those subject to expedited removal may be ordered removed after only a brief interview with an enforcement officer, with no hearing before an immigration judge and extremely limited procedural protections.

Expedited removal initially applied only to noncitizens seeking admission at a port of entry (and to a limited class of individuals who arrive to the U.S. by sea) – a position in which asylum seekers often find themselves. But in 2004, the Department of Homeland Security (DHS) extended application of expedited removal to the interior of the country, to include anyone apprehended within 100 miles of the U.S./Mexico border who has been present in the U.S. for 14 days or more and who lacks proper documentation or entered without inspection. Expedited removals now account for more than 30 percent of annual removals by Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) combined.

The expedited removal process authorizes immediate removal with few procedural protections. There is no right to counsel, no right to present evidence other than what the individual has on his or her person when apprehended, and most importantly, no hearing before an immigration judge. Expedited removal gives enforcement officials, who may lack adequate training, the power to make a legal finding of removability and to order individuals removed with little oversight or possibility for redress, even when that decision is legally incorrect.

Thousands of asylum seekers are subject to expedited removal each year.[2] To protect the right of those subject to expedited removal to request asylum, Congress established the credible fear process which requires a U.S. Citizenship and Immigration Services (USCIS) Asylum Officer to interview the individual to determine preliminarily if he or she might qualify for asylum before the person can be removed from the country.

The current credible fear process provides rigorous security checks to counter fraud and safeguard our national security. For those who may be subject to expedited removal, the process begins with the enforcement officer, who must ask a series questions to identify anyone who is afraid of return and must record accurate answers to those questions. Those answers are recorded on Form I-876AB Record of Sworn Statement in Proceedings Under Section 235(b)(1) of the Act. If the individual expresses a fear of return, the enforcement officer should refer the case to a USCIS Asylum Officer, who will conduct an interview with the individual while he or she is in detention. That person remains detained until the Asylum Officer determines they have a credible fear of persecution or torture. If the officer determines the individual lacks credible fear, he or she is subject to immediate removal. While detained, individuals still awaiting a decision on credible fear

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[2] USCIS. Credible Fear Workload Report. Summary FY09-13, *available at* http://www.uscis.gov/sites/default/files/USCIS/Outreach/Notes%20from%20Previous%20Engagements/2012/December%202012/Credible-FearFY2009-FY2012.pdf. In FY 2013, 20,532 credible fear interviews were given to asylum seekers subjected to expedited removal.

are run though preliminary biographic and biometric checks.[3] Any determination by the officer that an individual has a credible fear is then reviewed by a supervisor. If the individual is found to have a credible fear, USCIS will run additional security checks and finally place the individual in removal proceedings. Only at that point is the individual able to obtain a hearing before an immigration judge to present his or her case. Before an individual is granted asylum by a judge, the individual is checked through immigration, law enforcement, and intelligence databases housed in DHS, FBI, Department of Defense, Department of State, and other agencies.[4]

Detention of Asylum Seekers Pending Credible Fear Determinations

Asylum seekers subject to expedited removal must be detained, pursuant to federal law, while they are being interviewed and awaiting a determination of credible fear. Thousands of asylum seekers each year are held in jails and jail-like facilities, with criminal aliens and with staff ill-equipped to interact with psychologically-vulnerable victims, where they often experience additional trauma which hinders their ability to adequately present their case and may cause them to prematurely withdraw their asylum claims.[5] Detention leaves asylum seekers isolated with no guaranteed access to legal counsel, which further impairs their ability to navigate the complex asylum process.[6]

For asylum seekers arriving at a U.S. port of entry who are found to have a credible fear, ICE has discretion to grant parole from detention for individuals who establish their identities, pose neither a flight risk nor a danger to the community, and have no additional factors that weigh against their release. This limited procedure reflects a common-sense policy that individuals who pose no threat, much less victims who are seeking protection, do not need to be detained.

Improving the Asylum Process

To address the perception that too many people come to America's borders seeking asylum, some have proposed increasing mandatory detention or creating other barriers for asylum seekers. These steps will not necessarily improve national security but will certainly compromise the due process rights of vulnerable asylum seekers. Effective anti-fraud measures already exist in the adjudications process, and arbitrary or harsh rules often prevent bona fide asylum seekers from seeking, much less obtaining the protection they need.

AILA recommends the following reforms to ensure asylum seekers subject to expedited removal have a meaningful opportunity to seek protection from persecution.

- AILA's immigration lawyer members report that Border Patrol agents are issuing removal orders without asking about a fear of return. They are also misrepresenting the individuals' answers in the Form I-867AB, Record of Sworn Statement to reflect that the individual had expressed no fear of return, and are not referring individuals for credible fear interviews. In some cases agents recorded that the individuals expressed no fear of return despite the fact that the individual expressed a fear of return.

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[3] Testimony of Joseph Langois, Associate Director of USCIS Refugee, Asylum, and International Operations, before House Committee on Oversight and Government Reform, Subcommittee on National Security Hearing "Border Security Oversight, Part III: Examining Asylum Requests." July 17, 2013.
[4] Ibid.
[5] U.S. Commission on International Religious Freedom, *Assessing the U.S. Government's Detention of Asylum Seekers: Further Action Needed to Fully Implement Reforms*. April 2013.
[6] Center for Victims of Torture, *Tortured and Detained: Survivor Stories of U.S. Immigration Detention*. November 2013.

Such practices violate U.S. obligations under international treaties and its own laws to ensure asylum seekers at the border are given adequate opportunity to be heard before they are returned to a place of possible persecution or torture. AILA recommends DHS develop and implement more robust training on the expedited removal and credible fear processes to ensure that all immigration officers provide a reasonable opportunity for asylum seekers to obtain credible fear interviews. This training should be coordinated among USCIS, CBP and ICE. DHS should also develop and implement rigorous quality control and oversight mechanisms, especially regarding how officers and agents complete the Form I-867AB.

- The immigration court system and funding for the courts have not kept up with the dramatic increases in immigration enforcement over the past two decades. As of October 2013, the immigration courts had a backlog of 348,773 cases that far exceeds its capacity.[7] There are only about 250 immigration judges handling this enormous caseload, and immigration judges handle far higher caseloads than other administrative law judges, sometimes twice the cases per year.[8] There are even fewer attorney advisors to assist immigration judges in handling such an immense case load. As a result, asylum seekers frequently must wait years after their initial arrival before their asylum hearing is conducted. For those in detention, the backlog of cases can result in longer detention times and compound the damaging trauma experienced by victims of persecution. Congress should fund the immigration courts at a level commensurate with its funding for enforcement to properly address court backlogs and provide adequate staffing and resources for the immigration courts.

- For asylum seekers, the backlog results in long wait times during which they face an uncertain future. For those in detention, the backlog of cases can result in longer detention times that already have negative effects on victims of trauma. USCIS should hire sufficient additional Asylum Officers to meet the burgeoning need that is placing stress on the entire asylum system.

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[7] Immigration Court Backlog Tool, TRAC Immigration, http://trac.syr.edu/phptools/immigration/court_backlog/
[8] Executive Office for Immigration Review Immigration Court Listing, http://www.justice.gov/eoir/sibpages/ICadr.htm

December 12, 2013

The Honorable Robert Goodlatte
Chairman
House Committee on the Judiciary
2309 Rayburn House Office Building
Washington, D.C. 20515

The Honorable John Conyers, Jr.
Ranking Member
House Committee on the Judiciary
2426 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Goodlatte and Ranking Member Conyers:

We, the undersigned 118 legal experts and organizations including civil rights, human rights, and faith-based organizations and non-profit legal service providers, respectfully write to discourage new restrictions to the asylum system. Our organizations include experts and practitioners in asylum and immigration law with experience representing arriving asylum seekers, including survivors of torture, rape, sexual assault and other forms of religious, political, and other persecution.

For decades, the United States has served as a refuge for individuals fleeing persecution on account of their race, religion, nationality, political opinion, or social group. American values reflect a moral duty to ensure the well-being of those seeking refuge in our country, and legal obligations under domestic and international law require protecting refugees who reach our borders. The bi-partisan Refugee Act of 1980 enshrined into domestic law our legal commitment to sheltering the persecuted, a commitment that we have repeatedly renewed in legislation to protect victims of torture.

The "credible fear" process is in many cases the only mechanism that stands between an arriving asylum seeker and immediate deportation. As part of the 1996 immigration laws, Congress created an "expedited removal" provision that allows for the summary deportation of those who, like many asylum seekers, arrive at our borders without valid entry documents. At the same time, Congress created the credible fear process as a safeguard to this process in order to try to protect those fleeing torture or persecution from being immediately deported. Under the credible fear process, U.S. Customs and Border Protection officials must refer a migrant who expresses a fear of persecution or torture to U.S. Citizenship and Immigration Services (USCIS), which determines whether that person's fear is "credible." Unless or until USCIS determines that an individual is found to have a credible fear, he or she is subject to mandatory detention. A person whose fear is not found to be "credible" is subject to immediate deportation.

The credible fear process, which also triggers initial security checks, is only the first of many steps in the asylum process for those apprehended at or between ports of entry. A finding of "credible" fear is not the equivalent of a grant of asylum. Furthermore, when an individual's fear is found to be "credible," the government still has the authority to keep detained anyone it believes may be a threat to public safety or national security or a flight risk. An individual who passes the credible fear interview is not

automatically admitted into the United States; rather, he or she is immediately placed into removal proceedings. The asylum seeker can make a defensive claim before an immigration judge—sometimes from detention, and often without an attorney—and if the judge denies the claim, the person is ordered removed. If the judge grants the claim, the individual is subject to extensive security and background checks before receiving permission to remain in the United States. An asylum seeker is not eligible for asylum if found to be a terrorist or persecutor of others, and is subject to a permanent bar from receiving any immigration relief if he or she is found to have submitted a fraudulent application.[1]

While asylum seekers undergo the rigorous and lengthy credible fear and removal process, they often sit in costly immigration detention facilities that are generally ill-equipped to handle their mental and physical health needs. Detention often aggravates an asylum seeker's post-traumatic stress disorder (PTSD) or other mental health conditions.[2] Indeed, earlier this year, the bi-partisan U.S. Commission on International Religious Freedom found that the U.S. government often detains asylum seekers in inappropriate jail and jail-like facilities.[3] While some who pass a credible fear interview may be eligible for a bond hearing, only a narrow category of asylum seekers—those apprehended *at* ports of entry—are eligible for consideration for parole under existing guidance, and only *if* the government determines that they do not pose a flight risk or a danger to the community.

Rather than exploring more restrictions, there are critical steps policymakers could take to increase the integrity of the asylum system, including decreasing the use of unnecessary detention, more robustly funding the immigration courts and asylum office, and ensuring that officials are properly screening for potential fear of return. The U.S. Commission on International Religious Freedom found that sometimes those expressing fear at the border are not even referred for a credible fear interview, revealing significant gaps in the screening process.[4] Although in some cases individuals who have passed a credible fear interview are released, in other cases, asylum seekers held in prolonged detention abandon their cases altogether due to the trauma they experience by being unnecessarily held in detention. Furthermore, asylum seekers placed into removal proceedings face drastically underfunded and under-resourced immigration courts, facing long wait times as they await the hearing that determines whether they will receive protection in the United States or return to persecution or torture.

Rolling back protections in the asylum process would harm those in need of protection by discouraging *bona fide* asylum seekers from applying for relief, creating more strain on a costly and already over-used immigration detention system, and, worst of all, deporting those who are legitimately in need of protection back to the terrors they have fled. Fraud and abuse of the asylum system can and should be investigated using the many tools at the government has at its disposal to do so. However, in order for the United States to continue meeting its obligations and serving as a safe haven for the persecuted, it

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[1] For more information, see *Bars and Security Screening in the Asylum and Refugee Processes* at http://www.humanrightsfirst.org/wp-content/uploads/HRF-Security-Safeguards.pdf and *Anti Fraud and Security Safeguards in the Asylum System* at http://www.humanrightsfirst.org/wp-content/uploads/pdf/ANTI-FRAUD_AND_SECURITY_SAFEGUARDS_IN_THE_ASYLUM_SYSTEM.pdf.

[2] See, for example, *Tortured & Detained*, Center for Victims of Torture, November 2013 at http://www.cvt.org/sites/cvt.org/files/Report_TorturedAndDetained_Nov2013.pdf or *Jails and Jumpsuits: Transforming the U.S. Immigration Detention System—a Two Year Review*, Human Rights First, 2011, http://www.humanrightsfirst.org/wp-content/uploads/pdf/HRF-Jails-and-Jumpsuits-report.pdf.

[3] *Assessing the U.S. Government's Detention of Asylum Seekers: Further Action Needed to Fully Implement Reforms*, U.S. Commission on International Religious Freedom, April 2013, at http://www.uscirf.gov/images/1%8S-detention%20reforms%20report%20April%202013.pdf.

[4] *Report on Asylum Seekers in Expedited Removal*, U.S. Commission on International Religious Freedom, 2005, at http://www.uscirf.gov/reports-and-briefs/special-reports/7892.html

must be able to do the job with which it is tasked: carefully screen for those with a credible fear of return and make meaningful, case-by-case assessments of the actual need to detain.

We thank you for your consideration of these important issues and urge you to uphold and strengthen our nation's commitment to protect the persecuted.

Sincerely,

National/International Organizations

American Civil Liberties Union

American Friends Service Committee

American Immigration Lawyers Association

American Jewish Committee

Americans for Immigrant Justice, formerly Florida Immigrant Advocacy Center

Amnesty International USA

Asian Americans Advancing Justice-AAJC

Asylum Access

Casa de Esperanza: National Latina Network for Healthy Families and Communities

Center for Gender & Refugee Studies

Center for Victims of Torture

Church World Service

Columban Center for Advocacy and Outreach

Conference of Major Superiors of Men

Council for Global Equality

Council on American-Islamic Relations (CAIR)

Detention Watch Network

Family Equality Council

Friends Committee on National Legislation

GetEQUAL

HIAS

Human Rights Campaign

Human Rights First

Human Rights Watch

Immigration Equality Action Fund

Jesuit Refugee Service/USA

Kids in Need of Defense (KIND)

Lambda Legal

Leadership Conference on Civil and Human Rights

Leadership Conference of Women Religious

Love Exiles Foundation

Lutheran Immigration and Refugee Service

Marriage Equality USA

Mennonite Central Committee U.S. Washington Office

National Asian Pacific American Bar Association (NAPABA)

National Center for Lesbian Rights

National Center for Transgender Equality

National Coalition of Anti-Violence Programs (NCAVP)

National Council of Jewish Women

National Gay & Lesbian Chamber of Commerce

National Gay and Lesbian Task Force Action Fund

National Immigrant Justice Center

National Immigration Forum

National Immigration Law Center

National Latina Institute for Reproductive Health

National Queer Asian Pacific Islander Alliance

NETWORK, A National Catholic Social Justice Lobby

South Asian Americans Leading Together (SAALT)

Southeast Asia Resource Action Center

Tahirih Justice Center

The Advocates for Human Rights

The Episcopal Church

Transgender Law Center

Unid@s

U.S. Committee for Refugees and Immigrants (USCRI)

United We Dream

We Belong Together

Women's Refugee Commission

World Relief

State and Local Organizations

AACI Center for Survivors of Torture
California

Advocacy for Justice and Peace Committee of the Sisters of St. Francis of Philadelphia
Pennsylvania

Advocates for Survivors of Torture and Trauma
Maryland and Washington, D.C.

American Gateways
Texas

Asian Americans Advancing Justice-Los Angeles
California

Capital Area Immigrants' Rights Coalition
Washington, D.C.

Casa Latina
Washington

Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA)
California

Community Legal Services in East Palo Alto
California

Congregation Or Chadash
Illinois

DRUM - Desis Rising Up & Moving
New York

HIAS Pennsylvania
Pennsylvania

Human Rights Initiative of North Texas
Texas

Illinois Coalition for Immigrant and Refugee Rights
Illinois

Immigrant Law Center of Mimesota
Minnesota

Immigrant Legal Advocacy Project
Maine

JALSA - the Jewish Alliance for Law & Social Action
Massachusetts

Jewish Family Service of San Diego
California

Jewish Labor Committee Western Region
California

L.A Community Legal Center and Educational
California

Las Americas Immigrant Advocacy Center
Texas

Lawyers' Committee for Civil Rights of the San Francisco Bay Area
California

LGBTQ Immigrant Rights Coalition of Chicago
Illinois

Program for Torture Victims
California

Public Counsel
California

Refugee Representation Project of the Human Rights and Genocide Clinic at the Benjamin N. Cardozo School of Law
New York

Sisters of Mercy West Midwest Justice Team
Nebraska

Sisters of St. Joseph of Rochester
New York

Texas Civil Rights Project-Houston
Texas

University of Miami School of Law Human Rights Clinic
Florida

University of Miami School of Law Immigration Clinic
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Testimony

Of

Most Reverend Eusebio Elizondo

Auxiliary Bishop of the Archdiocese of Seattle, WA

Chairman, U.S. Conference of Catholic Bishops' Committee on Migration

Before the

House Judiciary Committee

Asylum Abuse: Is it overwhelming our borders?

Thursday, December 12, 2013

I am Bishop Eusebio Elizondo, auxiliary bishop of the archdiocese of Seattle, WA, and chairman of the U.S. Conference of Catholic Bishops' (USCCB) Committee on Migration. I testify today on behalf of the Committee on Migration about the Catholic Church's perspective on U.S. asylum policy.

I would like to thank Chairman Robert Goodlatte (R-VA) and Ranking Member John Conyers (R-MI), for the opportunity to comment on the important topic of U.S. asylum policy. It is especially timely as Catholics and all Christians prepare to celebrate the birth of Jesus, who was an asylum-seeker. One of Jesus' first experiences as an infant was to flee for his life from King Herod with his family to Egypt. Jesus, Mary, and Joseph were asylum-seekers and faced the same choice as the one facing thousands of asylum-seekers who flee to the United States every year.

Mr. Chairman, my testimony today will recommend that Congress:

- Strengthen the nation's asylum regime to ensure robust and humane asylum protection for bona-fide asylum seekers to our country;
- Adopts policies to ensure that unaccompanied alien children—among the most vulnerable of migrants—receive asylum protection and appropriate child welfare services; and
- Examine and seek solutions to the root causes of this migration, such as violence from non-state actors in countries of origin.

I. Catholic Social Teaching

The Catholic Church is an immigrant church. I myself was born in Mexico and am among the more than one-third of Catholics in the United States who are of Hispanic origin. The Catholic Church in the United States is also made up of more than 58 ethnic groups from throughout the world, including Asia, Africa, the Near East, and Latin America.

The Catholic Church has a long history of involvement in refugee and asylum protection and child protection, both in the advocacy arena and in welcoming and assimilating waves of immigrants, refugees, and asylum seekers who have helped build our nation. Migration and Refugee Services of USCCB (MRS/USCCB) is the largest refugee resettlement agency in the United States, resettling one million of the three million refugees who have come to our country since1975. MRS/USCCB is a national leader in caring for unaccompanied alien and refugee children. We work with over 100 Catholic Charities across the country to welcome refugees, asylees and unaccompanied alien children into our communities.

The Catholic Legal Immigration Network, Inc. (CLINIC), a subsidiary of USCCB, supports a rapidly growing network of church and community-based immigration programs. CLINIC's network now consists of over 212 members serving immigrants and their families, including asylum seekers and unaccompanied children, in over 300 offices.

The Catholic Church's work in assisting asylum seekers and all migrants stems from the belief that every person is created in God's image. In the Old Testament, God calls upon his people to care for the alien because of their own alien experience: "So, you, too, must befriend the alien, for you were once aliens yourselves in the land of Egypt" (Deut. 10:17-19). In the New Testament,

the image of the migrant is grounded in the life and teachings of Jesus Christ. In his own life and work, Jesus identified himself with newcomers and with other marginalized persons in a special way: "I was a stranger and you welcomed me." (Mt. 25:35). Jesus himself was an itinerant preacher without a home of his own, and as noted above, he was an asylum seeker fleeing to Egypt to avoid persecution and death. (Mt. 2:15).

In modern times, popes over the last 100 years have developed the Church's teaching on migration. Pope Pius XII reaffirmed the Church's commitment to caring for pilgrims, aliens, exiles, and migrants of every kind, affirming that all peoples have the right to conditions worthy of human life and, if these conditions are not present, the right to migrate.[1]

Pope John Paul II states that there is a need to balance the rights of nations to control their borders with basic human rights, including the right to work: "Interdependence must be transformed into solidarity based upon the principle that the goods of creation are meant for all."[2] In his pastoral statement, Ecclesia in America, John Paul II reaffirmed the rights of migrants and their families and the need for respecting human dignity, "even in cases of non-legal immigration."[3]

In an address to the faithful on June 5, 2005, His Holiness Pope Benedict XVI referenced migration and migrant families; "… my thoughts go to those who are far from their homeland and often also from their families; I hope that they will always meet receptive friends and hearts on their path who are capable of supporting them in the difficulties of the day."

Finally, Pope Francis defended the rights of asylum-seekers early in his papacy, traveling to Lampedusa, Italy, to call for their protection. Pope Francis decried the "globalization of indifference" and the "throwaway culture" that lead to the disregard of those fleeing persecution or seeking a better life.

In their joint pastoral letter, *Strangers No Longer: Together on the Journey of Hope, A Pastoral Letter Concerning Migration*," January 23, 2003 (*Strangers No Longer)*, the U.S. and Mexican Catholic bishops further define Church teaching on migration, calling for nations to work toward a "globalization of solidarity." "It is now time to harmonize policies on the movement of people, particularly in a way that respects the human dignity of the migrant and recognizes the social consequences of globalization." No. 57.

In their letter, the bishops stressed that vulnerable immigrant populations, including refugees, asylum seekers, and unaccompanied minors, should be afforded protection, without being placed in incarceration while their claims are being considered: "Refugees and asylum seekers should be afforded protection. Those who flee wars and persecution should be protected by the global community. This requires, at a minimum, that migrants have a right to claim refugee status without incarceration and to have their claims fully considered by a competent authority." No. 37. "Because of their heightened vulnerability, unaccompanied minors require special consideration and care." No. 82. Asylum seekers and refugees should "have access to appropriate due process protections consistent with international law." No. 99.

For these reasons, while the Catholic Church recognizes governments' sovereign right to control and protect the border, we hold a strong and pervasive pastoral interest in the welfare of migrants,

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[1] Pope Pius XII, Exsul Familia (On the Spiritual Care of Migrants), September, 1952.
[2] Pope John Paul II, Sollicitudo Rel Socialis, (On Social Concern) No. 39.
[3] Pope John Paul II, Ecclesia in America (The Church in America), January 22, 1999, no. 65.

including asylum seekers and unaccompanied children, and welcome newcomers from all lands. The current immigration system, which can lead to family separation, arbitrary detention, exploitation, and even death in the desert, is morally unacceptable and must be reformed. The aspects of that reform that I will address today relate to asylum-seekers. I will also explore how the recent increase of unaccompanied children, many of whom are fleeing violence, might best be addressed.

II. Factors pushing asylum-seekers to the U.S. border

The Catholic Church supports maintaining and enhancing a robust, and humane U.S. asylum regime, especially for those requesting protection at our southern border. In recent years, there has been an increase in violence in Mexico and Central America and a resulting uptick in asylum claims.

An increase in the number of asylum seekers at the border can be seen by the steady increase in the number of credible fear determinations in the last five years and especially by the spike in applications this year: 5,523 in FY2009; 7,848 in FY2010; 10,667 in FY2011; 12,056 in FY2012; and 33,283 in FY2013. AILA InfoNet Doc. No. 13110804 (Posted 11/08/13), provided by DHS/USCIS, 10/10/2013.

We are deeply concerned about the root causes that compel persons to flee from Latin America and Mexico to the United States for protection. Most observers believe that this recent migration is due to the increased criminal violence and human rights violations in Central America and Mexico. The U.S. State Department observes that

> Violence is tragically commonplace, and crime routinely goes unreported, uninvestigated, or unprosecuted. The resulting impunity affects all citizens, but some groups tend to suffer disproportionally, such as community leaders and advocates for human rights and justice, youth, women, and other vulnerable populations. Public officials who ignore human rights violations and perpetuate a culture of impunity also undermine the rule of law and rob citizens of their trust in government institutions.[4]

USCCB recently returned from a fact-finding trip to the region to try to better understand these root causes. We found the following:

Violence is permeating all aspects of life in parts of Mexico and Central America. Organized gangs, drug cartels, human traffickers, and smuggling rings operate with impunity, intimidating and threatening families, particularly youth. Gang members are present in communities, charging "renta" to families and businesses in order to receive "protection." They also recruit young persons in school, forcing them to join the gang or be killed. The governments in the region, lacking resources and the political will, have been unable to control these non-state actors, and in some cases have had to co-exist with them. There are reports that law enforcement and even government officials cooperate with these groups and that corruption is prevalent. As an example, 95 percent of crimes against youth in Honduras go unpunished. A 2012 UNICEF poll concluded that 70 percent of 12 to 17-year old respondents in El Salvador said that gang intimidation and family disintegration had sparked their desire to leave the country.

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[4] Fact Sheet, Central America Regional Security Initiative: Citizen Security, Human Rights, and the Rule of Law, Bureau of Western Hemisphere Affairs, U.S. Department of State, available at http://www.state.gov/p/wha/rls/fs/2013/210019.htm

Violence, combined with the lack of economic opportunity, has led to the breakdown of the family, leaving vulnerable members unprotected. In many poor families in Central America, one or both parents have left in order to seek employment in the United States. This has left a remaining spouse or minors in the household unprotected and vulnerable to gangs and drug cartels. As a result, youth particularly are forced to become part of a gang for their own protection or forced, at threat of violence, to sell or carry drugs. In some cases, young boys are sent to work in the fields or other sectors to provide for the family, foregoing their education. Young girls are impacted as well, recruited to become the "girlfriends" of gang members and susceptible to sex trafficking. In Honduras and El Salvador, the age of child bearing for women has dropped from 18 to age 16 over the last ten years. Domestic violence has increased as well, with youth reporting that family disintegration caused by violence in the community and poverty has led to abuse in the home.

Migrants fleeing violence for safety cannot find protection in Mexico. Migrants who flee Central America cannot find safety in Mexico, as the asylum system does not adequately protect them. The journey north is becoming more dangerous, as migrants, especially youth, are charged passage "fees" by organized crime elements at threat of their lives. Human traffickers flourish as well, imprisoning young people for labor or sex purposes. Drug cartels force migrants to help them transport drugs or be killed. By the time they reach the United States, if at all, they are in desperate need of protection. According to a Covenant House report, as many as 80 percent of young women who make the trek north endure some form of sexual violence in Mexico.

A significant number of migrants, particularly youth, have valid asylum claims. While the popular perception of many in the United States is that migrants come here for economic reasons, a growing number are fleeing violence in their homelands. The increased number of those requesting asylum shows a more complex picture, with many children, for example, entering the United States to join family members in search of security. Denying them asylum and sending them back to the gangs and drug traffickers persecuting them could ensure their demise.

A. The Special Case of Unaccompanied Alien Minors

Because of the factors mentioned, there has been a reported rise in the number of unaccompanied children fleeing from Latin America in recent years. Unaccompanied Alien Children (UAC) are among the most vulnerable populations who attempt to enter the United States.

With the passage of the Homeland Security Act of 2002, the federal Department of Health and Human Services/ Office of Refugee Resettlement (HHS/ORR) was given the responsibility of providing protection, care, and placement of UAC. The act defines UAC as "children who have no lawful immigration status in the United States; have not attained 18 years of age; have no parent or legal guardian in the United States; or no parent or legal guardian in the United States is available to provide care and physical custody." *Homeland Security Act of 2002*, Public Law 107-296, 462(g), November 2002. Many UACs, generally from Mexico and Central American countries, are apprehended while attempting to cross the U.S.-Mexican border, while others are identified as unaccompanied undocumented children after being placed in custody by DHS.

As with asylum seekers, these unaccompanied children rarely have documentation, and so Congress likewise passed special provisions for their protection in the context of migration enforcement at the border. When Department of Homeland Security/Customs and Border Patrol (DHS/CBP) agents encounter a child from Central America, they are required to transfer the child to the Department of Health and Human Services/Office of Refugee Resettlement (HHS/ORR). When a DHS/CBP agent encounters other children (mostly coming from Mexico), the agent must

transfer the children to HHS/ORR if through the preliminary screening the agent determines that they have a fear of returning to the home country, are not competent to speak for themselves, or show signs of being trafficked. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. 110-457, 122 Stat. 5044 (2008).

A substantial and almost continuous increase in the number of unaccompanied children arriving at the U.S.-Mexican border can be seen by the increased number of children referred by CBP to HHS/ORR: 6,622 in FY2009; 8,287 in FY2010; 7,210 in FY2011; 14,649 in FY2012; and 24,468 in FY2013. Report to the Congress. HHS/ORR, FY2009, FY2010, FY2011, FY2012 (the FY2013 statistic was provided by HHS/ORR at a liaison meeting with NGOs).

III. Policy Recommendations

A. Assuring Robust, Humane Asylum Protection

Mr. Chairman, we understand the desire of you and your colleagues to ensure that the U.S. asylum system provides protection to bona fide asylum-seekers and not those attempting to harm us. We share that goal, but believe that the United States currently has the tools to prevent a would-be terrorist from entering the country. The U.S. government can protect the American public by using the many tools available to them.

Over the years, Congress has built in many security and fraud precautions into the U.S. asylum process.[5] These include an in-depth examination of each person's case, an in-person interview or hearing, and rigorous examination of evidence to make sure the applicant meets the strict refugee definition and is not otherwise barred. The asylum seeker signs the application under penalty of perjury, fraudulent applicants are permanently barred, and fraudulent filers, preparers and attorneys can be prosecuted.

In addition, there are numerous bars that prohibit asylum for anyone who has persecuted someone else, committed a particularly serious crime, an aggravated felony, a serious nonpolitical crime abroad, terrorist activity, material support of terrorist activity, or who reasonably presents a danger to the security of the United States. (INA sec. 208(b)(2)(ii-v).

Moreover, federal law requires extensive background and security checks. (INA sec. 208(d)(5)(A)(i).) The data bases, among others, include the Central Index System (CIS), Deportable Alien Control System (DACs), Automated Nationwide System for Immigration Review (ANSIR), the Interagency Border Inspection System (IBIS) (that has incorporated the National Automated Immigration Lookout System (NAILs), and IDENT database checks, (See Office of International Affairs Asylum Division, *Affirmative Asylum Procedures Manual* (*Asylum Manual*), 2007, updated 2010, pp. 2-6.) The FBI also checks names, birthdates, and fingerprints against their databases, and all asylum applicants are also sent to the CIA to be checked against their databases.

Mr. Chairman, we believe these tools, properly used, are sufficient to ensure that the asylum

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[5]For more information, see Bars and Security Screening in the Asylum and Refugee Processes at http://www.humanrightsfirst.org/wp-content/uploads/HRF-Security-Safeguards.pdf and Anti Fraud and Security Safeguards in the Asylum System at http://www.humanrightsfirst.org/wp-content/uploads/pdf/ANTI-FRAUD_AND_SECURITY_SAFEGUARDS_IN_THE_ASYLUM_SYSTEM.pdf.

protection system protects those deserving of relief. Increased penalties and detention for asylum-seekers would not deter would-be terrorists, but would harm those seeking protection.

In addition to using the tools available to identify those attempting to harm us, we urge the adoption of the following policy recommendations:

Pass Immigration Reform Legislation and Stop the Enforcement-Only Approach to Managing Migration. Since 1993, when the U.S. Border Patrol initiated a series of enforcement initiatives along our southern border to stem the flow of undocumented migrants, Congress has appropriated and the federal government spent about $50 billion on border enforcement, tripling the number of Border Patrol agents and introducing technology and fencing along the border.

During the same period, as Congress has enacted one enforcement-only measure after another, the number of undocumented in the country has more than doubled and, tragically, nearly 8,000 migrants have perished in the desert of the United States. One of the more troubling and severe enforcement efforts that has been implemented in the name of protecting the border, Operation Streamline, has criminalized unauthorized entry and re-entry of immigrants beyond the civil immigration system, placing them in the U.S. federal criminal justice system. The sheer volume of individuals detained under this program has overwhelmed the U.S. court and prison system and has led to procedural due process violations in the courts and substantive due process violations related to arbitrary detention.

As you may know, Mr. Chairman, the U.S. bishops have expressed concern with the border fence that has been built along our southern border as well as the ongoing implementation of Operation Streamline. We do not believe these approaches will solve the problem of illegal immigration and could send migrants, including asylum seekers and unaccompanied children, into even more remote regions of the border and into the hands of unscrupulous smugglers. They are even more inappropriate and ineffective as deterrent to asylum seekers and children fleeing violence and human right violations.

Rather, we would support your consideration of immigration reform legislation which would include 1) a path to citizenship for the 11 million in this country; 2) a worker program to permit low-skilled workers to migrate safely and legally to work in important industries in this country; 3) reforms in the family-based immigration system so that families are reunited in an expeditious manner; 4) restoration of due process protections in immigration law; and 5) policies which address the root causes of migration.

Pursue alternatives to detention. Mr. Chairman, we are deeply concerned with the status quo when it comes to the detention of aliens who are in removal proceedings, especially vulnerable migrants, such as asylum seekers. We applaud DHS for their recent initiatives to reform the detention system, but we believe that statutory change is necessary.

Earlier this year, the bi-partisan U.S. Commission on International Religious Freedom (USCIRF) found that the U.S. often detains asylum seekers in inappropriate jail and jail-like facilities. See *Assessing the U.S. Government's Detention of Asylum Seekers: Further Action Needed to Fully Implement Reforms*, U.S. Commission on International Religious Freedom, April 2013.

In this regard, we recommend the following policy reforms:

- end mandatory detention and the nationwide bed mandate to restore discretion to immigration officials and judges to release individuals who are not a flight risk and do not pose a risk to public safety, particularly asylum-seekers;

- establish and fund nationwide, community-based alternatives to detention programs;

- improve standards for detention conditions, by promulgating regulations that apply to all facilities used for U.S. immigration detention, making the detention system truly civil in nature and including prompt medical care in compliance with accreditation requirements, and appropriate standards through regulations for families, children, and victims of persecution, torture, and trafficking;

- provide access to legal counsel for those in asylum and immigration proceedings;

- provide funding and authorizations for legal orientation programs nationwide by the DOJ/EOIR to facilitate more just and efficient proceedings;

- increase funding for adjudication by DHS/CIS and by DOJ/EOIR so that backlogged cases are adjudicated and there are sufficient resources to adjudicate ongoing cases in a timely manner; and

- establish a new Office of Detention Oversight at the Department of Homeland Security.

End Expedited Removal Reform or At Least Pursue USCIRF Reforms. Mr. Chairman, we are also concerned with the ongoing expansion of the Expedited Removal process. Those who come to our shores or borders in need of protection from persecution should be afforded an opportunity to assert their claim to a qualified adjudicator and should not be detained unnecessarily. The expansion of "expedited removal," a practice that puts *bona fide* refugees and other vulnerable migrants at risk of wrongful deportation, should be halted. At a minimum, strong safeguards, such as those suggested in the 2005 and 2013 reports by the bi-partisan U.S. Commission on International Religious Freedom (USCIRF), should be instituted to prevent the return of the persecuted to their persecutors. We urge the subcommittee to include these reforms in any reform legislation.

Pursue Fairer Access to Asylum by Revising Unfair, Inhumane Bars and Restrictions. We also believe that the definitions of terrorist activity, terrorist organization, and what constitutes material support to a terrorist organization in the Immigration and Nationality Act (INA) were written so broadly and applied so expansively that thousands of refugees and asylum-seekers are being unjustly labeled as supporters of terrorist organizations or participants in terrorist activities. These definitions have prevented thousands of bona-fide refugees from receiving protection in the United States, as well as prevented or blocked thousands of applications for permanent residence or for family reunification.

We urge the committee to reexamine these definitions and to consider altering them in a manner which preserves their intent to prevent actual terrorists from entering our country without harming those who are themselves victims of terror—refugees and asylum-seekers. At a minimum, we urge you to enact an exception for refugees who provide assistance to a defined terrorist organization under duress.

Repeal the one-year asylum deadline. We ask the committee to repeal the one-year filing deadline on asylum applications, which has prevented many asylum-seekers from obtaining immigration relief. Often it takes time for asylum-seekers to adjust to the United States and obtain legal assistance to file these claims. Many are detained and are unable to access the asylum system.

Restore Due Process Reforms. Finally, we urge the committee to reexamine the changes made by the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which eviscerated due process protections for many immigrants and some asylum seekers. We urge you to restore administrative and judicial discretion in removal proceedings so that families are not divided; repeal the 3-and 10-year bars to re-entry, and revisit the number and types of offenses considered as aggravated felonies as a matter of immigration law.

B. Assure Robust, Humane Child Protection

Mr. Chairman, the USCCB is also very concerned with the plight of unaccompanied children who enter the United States. The number of unaccompanied alien children entering the U.S. has reached new high levels with more than 24,000 coming into HHS/ORR custody in FY2013.

With this in mind, we feel strongly that the following changes should be made in laws impacting minors:

- All children at the border, including unaccompanied Mexican children, should be screened for trafficking and fear of return as mandated in the Trafficking Victims Protection Act of 2008. CBP agents should be trained by child welfare experts so they are able to identify signs of trauma and the level of competence of each child. Child welfare experts should assist in the screening and other humanitarian assistance at the border.

- Unaccompanied Alien Minors Special Immigrant Juvenile and U-Visa recipients should qualify for refugee benefits, so they can receive appropriate health-care and social services.

- Small-scale community-based programming should be a priority for housing of unaccompanied children in federal custody as opposed to large-scale institutionalized settings.

- Legal counsel should be guaranteed to unaccompanied alien minors, so they can navigate the complex legal immigration system and obtain appropriate immigration relief.

- Post-release family preservation services should be guaranteed for all unaccompanied minors who are released to sponsors in the United States.

- A transnational family reunification approach should be adopted when deciding on durable solutions in the best interest of unaccompanied children. This includes family tracing and assessment, through international home studies, of the viability of all family reunification options, regardless of geography, for reunification.

- Return and re-integration services in countries of origin should be supported by the U.S. Government, with clear authority and appropriations given to the appropriate federal agency.

- An independent outcome evaluation should be conducted that assesses the well-being of unaccompanied children released from federal custody, taking in account such factors such as legal relief and child permanency outcomes.

C. Investigate and Address the Root Causes of Migration

As the bishops have also taught, all persons have the right not to have to migrate. All should be able to remain in their homeland and find there the means to support themselves and their families in dignity. Migration flows should be driven by choice, not necessity.

It is clear that, beyond economic reasons, migrants, particularly children, are migrating to escape persecution and to receive protection. First, efforts to address the underlying causes of violence in the border regions must continue. Policies must reflect the importance of controlling the illicit drug trade, the centrality of curbing corruption at every level of national life, and the need to curtail the arms trade, weapons and human trafficking, as well as the resultant violence that accompanies these illicit activities.

Second, the U.S. government should partner with governments in Central America to address gang activity. This would not only include enforcement assistance, but also help with improving schools and economic opportunities. Violence is allowed to flourish in a community when there are no other alternatives to help persons, especially youth, to improve their futures.

Finally, the United States should assist Central American governments in improving their child welfare systems, so that children receive care and protection, as well as funding programs which provide youth with education and skills training, so they can find a future in their homelands. These are prevention programs which could help stem migration.

IV. Conclusion

Mr. Chairman, I would like to thank you for the opportunity to testify today. In conclusion, we believe that the United States should remain a safe haven for vulnerable populations who are in need of safety from harm. We can continue that honored tradition without sacrificing our national security.

Thank you for your consideration of our views.

UNHCR
United Nations High Commissioner for Refuge
Haut Commissariat des Nations Unies pour les réf

Written Statement for the Record
Submitted by

Leslie E. Vélez
Senior Protection Officer
United Nations High Commissioner for Refugees

To

House Committee on the Judiciary
Hearing on

"Asylum Abuse: Is it Overwhelming our Borders?"

12 December 2013

Mr. Chairman, Members of the Committee, thank you for the opportunity to submit a statement on today's hearing on asylum at the U.S. border.

The Office of the United Nations High Commissioner for Refugees (UNHCR) was established on December 14, 1950 by the United Nations General Assembly. UNHCR, as the UN Refugee Agency, is mandated to lead and co-ordinate international action to protect and find solutions for refugees around the world. Its primary purpose is to safeguard the rights and well-heing of those fleeing persecution. It strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another country, with the option to return home voluntarily, integrate locally or to resettle in a third country. UNHCR has been entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with Governments, to seek solutions to the problem of refugees.[1] With more than 60 years as the global authority on refugee protection, we also bring to hear notable experience and expertise on the matter. We have a particular interest in the subject matter raised by this hearing.

The United States has a proud and long-standing tradition of protecting and welcoming victims of persecution. The United States' refugee resettlement program and asylum system reflect the nation's highest values and history, standing firm as a beacon of hope for the persecuted since the nation's founding.

The U.S. asylum procedures are guided by or built around responsibilities derived from its international and regional refugee instruments, notahly the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (the Refugee Convention), its 1967 Protocol, international human rights law and humanitarian law, as well as relevant UNHCR Executive Committee Conclusions.[2] Fair and efficient procedures are an essential element in the full and inclusive application of the Refugee Convention. They enable a State to identify those who should benefit from international protection under the Refugee Convention, and those who should not. The U.S. has acknowledged their importance by recognizing the need for all asylum-seekers to have access to them.[3]

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[1] UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V), at: http://www.unhcr.org/refworld/docid/3ae6b3628.html. UN General Assembly, Protocol Relating to the Status of Refugees, 30 January 1967, United Nations, Treaty Series, vol. 606, p. 267, available at: http://www.unhcr.org/refworld/docid/3ae6b3ae4.html. Paragraph 8 of UNHCR's Statute confers responsibility on UNHCR for supervising international conventions for the protection of refugees, whereas the 1951 Convention relating to the Status of Refugees ("the 1951 Convention") and its 1967 Protocol relating to the Status of Refugees ("the 1967 Protocol") oblige States to cooperate with UNHCR in the exercise of its mandate, in particular facilitating UNHCR's duty of supervising the application of the provisions of the 1951 Convention and 1967 Protocol (Article 35 of the 1951 Convention and Article II of the 1967 Protocol). UNHCR's supervisory responsibility extends to all States Parties to either instrument, including the United States (U.S.).

[2] Refugee Act of 1980, Pub. L No. 96-212, 94 Stat. 102. (Codified as 8 USC §§ 1157-1159 (1980)). Notably Conclusion No. 8 (XXVIII) 1977, on the determination of refugee status (A/AC.96/549, para. 53.6); Conclusion No. 30 (XXXIV) 1983 (A/AC.96/631, para. 97.2), on the problem of manifestly unfounded or abusive applications for refugee status or asylum.

[3] Conclusion No. 81 (XLVIII) 1997, para. (h) (A/AC.96/895, para. 18); Conclusion No. 82 (XLVIII) 1997 para.(d)(iii) (A/AC.96/895, para.19); Conclusion No. 85 (XLIX), 1998, para. (q) (A/AC.96/911, para. 21.3). In mass influx situations, access to individual procedures may not, however, prove practicable.

Against the backdrop of mixed migratory movements, smuggling and trafficking of people and a degree of misuse of the asylum process for migration outcomes, UNHCR recognizes that Member States to the Refugee Convention, including the U.S., have legitimate concerns when developing and implementing fair and efficient procedures in that they can seem unwieldy, costly, and not necessarily able to respond effectively to misuse. The role played by asylum procedures in the overall management of a broader migratory phenomenon is relevant to this examination. UNHCR, under its mandate, is legally responsible for guiding the United States' choices regarding the procedure and the safeguards its system contains. The intention here is to identify the core elements necessary for fair and efficient decision-making in keeping with international refugee protection principles.

1. The changing nature of conflict in the region is affecting the U.S.

Critical to fair and efficient asylum procedures is evaluating the conditions that give rise to a claim for international protection. Understanding the country conditions that give rise to increased claims for international protection is essential to complying with international prohibitions against return to persecution, but it also promotes more informed and effective public policy. Empirical and comparative research consistently concludes that restrictive immigration enforcement policies do not deter individuals from seeking international protection, though they can limit their ability to present their claims. By nature, asylum-seekers do not choose to leave their homes and communities – they are forced to flee for their lives.

As an adjudicator of claims for international protection in over 75 countries, UNHCR is charged with investigating and understanding the dynamics of displacement underlying asylum-seekers' claims for protection. To that end, UNHCR is working to understand the root causes of the increased displacement of Central American and Mexican women, men and children. Together with our colleagues in offices across the Americas region, UNHCR Washington is examining and documenting the security situation and asylum-seekers' reasons for leaving.

Our first study on this identified the emergence of new forms of violence through the merging of Mexican drug cartels and Central America's brutal gangs.[4] In it, UNHCR found that violence, and the threat of it, forcibly displaces an increased number of individuals from Central America. Individuals are increasingly fleeing other conditions such as political unrest and lack of meaningful redress for abuses committed in the region. This is consistent with trends UNHCR has seen throughout the region. While nefarious parties may attempt to abuse the asylum system to their favor, it should not be overlooked that growing and very legitimate protection claims are being identified among the Central American and Mexican populations throughout the region. Consistent with international obligations under the Refugee Convention and its 1967 Protocol, those claims must be heard.

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[4] UNHCR and International Centre for the Human Rights of Migrants, "Forced Displacement and Protection Needs produced by new forms of Violence and Criminality in Central America," May 2012.

2. Fair and efficient asylum procedures require that in an expedited deportation process, individuals with legitimate asylum claims have access to these procedures.

UNHCR recognizes and supports the need for efficient asylum procedures. This is in the interests both of asylum applicants and countries of asylum. However, States should not dispense with key procedural safeguards or the quality of the examination procedure to meet time limits or numerical targets. Sacrificing key procedural safeguards for the examination may result in flawed decisions and lead to the return of a refugee to a country where they fear persecution.

In recognizing the grave consequences of an erroneous asylum determination or the outright rejection of asylum seekers at the horder, the U.S. and other States serving as part of the UNHCR Executive Committee, adopted Conclusion No. 30, which sets the standard for initial screenings in the horder context:

> "Clearly abusive" and "manifestly unfounded" applications are "those which are clearly fraudulent or not related to the criteria for the granting of refugee status laid down in the 1951 ... Convention ... nor to any other criteria justifying the granting of asylum."

Abusive or fraudulent claims involve those made by individuals who clearly do not need international protection, as well as claims involving deception or intent to mislead which generally denote bad faith on the part of the applicant. Whether a case is deemed "manifestly unfounded" or not will depend upon the degree of linkage hetween the stated reasons for departure and the refugee definition. One potential problem in applying this notion is that not all asylum-seekers have the capacity without assistance to articulate clearly and comprehensively why they left, and certainly not where there is an element of fear or distrust of authorities involved, or where other factors are at play, including the quality of the interpreters.

Under U.S. law, the initial credible fear screening requires a "significant possibility" of estahlishing eligihility for asylum.[5] This is inconsistent with international standard because the U.S. standard is a higher threshold that requires the asylum seeker to establish elements of a legal defense to deportation rather than allowing the government to show that a claim is abusive, fraudulent, or unfounded. Individual claims that are not clearly ahusive or manifestly unfounded should have access to full procedures. Under U.S. law, only those individuals who can meet the higher standard will he allowed to access asylum procedures. The others will access no procedures.

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[5] In 1998, Mr. SMITH of Texas, from the Committee on the Judiciary, submitted a report citing on page 17 that "The expedited removal process has been a dramatic success. Bona fide asylum claims are now granted much more quickly, but illegal immigration is no longer encouraged or rewarded. The "credible fear" standard is not onerous—according to the INS, over 90% of illegal aliens who claim asylum in expedited removal proceedings pass the "credible fear" test—but it is effective in deterring manifestly unfounded claims." http://www.gpo.gov/fdsys/pkg/CRPT-105hrpt480/pdf/CRPT-105hrpt480-pt3.pdf

For these reasons, UNHCR closely monitors the current credible fear screening standard as the first, critical procedural step that once passed, only allows an asylum-seeker a chance to have a full hearing on her asylum claim. It is not, in itself, a grant of asylum. As the gateway to fuller protection procedures, it is critical, then, that the standard of proof be one that balances examining the elements of the claim with the reality that it is not a full consideration of the claim.

3. The best means of preventing abuse of the institution of asylum is to timely process asylum cases.

Fair and efficient asylum procedures are critical to maintaining the integrity of the institution of asylum and preventing its abuse. Investing additional resources into elements of the asylum system that prevent fraud and that ensure claims are efficiently and fairly adjudicated is a smart investment for States. This not only balances non-refoulement (prohibition from the forced return of a refugee) obligations, but it curbs abuse of the asylum system.

Without efficient determinations, an asylum-seeker may abandon her claim due to lost confidence in the system's ability to provide her protection. Still others might take advantage of the delay to abuse the system. Either way, the result is the same – asylum-seekers who begin the process may not complete it, in turn eroding the protection environment for those legitimately in need of asylum.

Having an asylum system that efficiently and fairly adjudicates claims for protection not only respects the rights of asylum-seekers, but it also discourages those who would seek to abuse the system. The current U.S. system is under-resourced and any increase in the number of individuals with claims to international protection strain existing levels of capacity. It is not uncommon for an asylum seeker in the U.S. to wait years before a full consideration of her case. The solution is timely processing allowing the U.S. system to approve meritorious cases and reject others.

4. Arbitrary deprivation of asylum-seekers' liberty undermines fair and efficient asylum procedures.

UNHCR recognizes that detention of asylum-seekers may be legitimate under specific, limited circumstances.[6] Such detention, though, can never be arbitrary. To avoid arbitrariness, detention must only be used after an individualized determination that detention is necessary, reasonable and proportionate to any risk of flight or danger to the community the asylum-seeker presents. Further, sufficiency of less-restrictive alternatives to detention must be considered first. Finally, detention must only be used for the least amount of time necessary and be reviewed periodically, by an independent authority.[7] Beyond the rights at stake, detention can place severe psychosocial strain on asylum-seekers many of whom are survivors of torture. This in turn can diminish an asylum-seeker's capacity to meaningfully present her claim for international protection.

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[6] UN High Commissioner for Refugees (UNHCR), Detention of Refugees and Asylum-Seekers, 13 October 1986, No. 44 (XXXVII) - 1986, available at: http://www.refworld.org/docid/3ae68c43c0.html

[7] UN High Commissioner for Refugees (UNHCR), Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, available at: http://www.refworld.org/docid/503489533b8.html.

In the context of the U.S. expedited removal and the credible fear determination process, an asylum-seeker's ability to request release on bond from an independent entity—i.e., an immigration judge—depends on where she declared her intention to seek asylum. Asylum-seekers who request asylum at a port of entry to the United States ("arriving" asylum-seekers) and pass their credible fear interview can proceed to have their asylum claims heard by a judge; however, the judge cannot consider them for release.

Only Immigration and Customs Enforcement (ICE) currently holds the discretionary authority to consider "arriving" asylum-seekers for release on parole. This parole authority is the only mechanism ensuring against arbitrary detention. Applied in a way consistent with its letter and spirit, ICE's 2009 parole directive helps ensure that "arriving" asylum seekers are not subject to unnecessary and costly detention, balanced by the government interest in no absconding. However, only a small minority of individuals eligible to be considered for release under this policy are granted it.

Asylum-seekers are seeking protection from forced return to their country of origin and current U.S. law creates a lawful status for these individuals after they are formally recognized to have met the definition of a refugee. By this nature, asylum seekers in this process have a strong incentive to appear at their immigration appointment significantly mitigating flight risk. This is reflected in the decrease in recent years in the number of *in absentia* removal orders were issued for asylum seekers. Data obtained by UNHCR from the Executive Office for Immigration Review (EOIR) demonstrates that from FY 2008 to FY 2012, the overall number of absconder rates among asylum-seekers decrease numerically, from 4,768 (out of 46,208) to 2,192 (out of 44,282). The absconder rates also decreased proportionately among all asylum decisions, from 10.3% in FY 2008 to 5.0% in FY 2012.

Conclusion

We strongly applaud America's long-standing global leadership role in refugee protection. The United States sets an example for countries around the world. In the end, understanding broader regional security and protection dynamics and ensuring adequate resources for a fair and efficient asylum system is the best prescription for ensuring the integrity of an asylum system. The United States has been a long-standing global leader on the protection of refugees and asylum-seekers, and serves as an example to other countries around the world on how these populations are treated. Fraud detection, more efficient procedures, and better-informed asylum decisions and policies are good practices in the United States that would discourage abuse of the system and encourage improvement to the institution of asylum the world over. Any increases in arbitrary detention or barriers to meaningfully presenting asylum claims could very well likely have the opposite effect.

Mr. GOODLATTE. The Chair now recognizes the gentleman from Iowa, Mr. King, for 5 minutes.

Mr. KING. Thank you, Mr. Chairman.

I thank the witnesses for your testimony.

First, I would like to turn to Mr. Ragsdale and follow up on a question, and that is that how many who claim credible fear fail to appear before an immigration judge? I know you testified that you are aware of that number. What is it?

Mr. RAGSDALE. I am. It's a blended number, which is why it's difficult to calculate. In other words, there are not year-to-year distinct datasets.

So, in other words, someone that arrives this year gets a hearing in front of an immigration judge, and it varies in city to city based on the docket, may not see an immigration judge for a final decision or failure to appear for their hearing until years later. So that data is, in fact, maintained by the Executive Office for Immigration Review.

Mr. KING. When you draw a conclusion as to that data that you are aware of, what is that conclusion that you draw?

Mr. RAGSDALE. It is somewhere around 20 percent.

Mr. KING. Twenty percent fail to appear?

Mr. RAGSDALE. Correct.

Mr. KING. That is interesting. I remember John Ashcroft testifying before this Committee on a broader group of those who failed to appear, and his number that day some years ago was 84 percent are alien absconders. And so, that is a number I will want to examine more deeply. I appreciate your response.

I would like to go with Mr. Fisher and ask you are your apprehensions at the—well, I want to ask some questions about drug interdiction at the border. Are those numbers up or down over the last, say, 5 years in your experience?

Mr. FISHER. Over the last 5 years, depending upon marijuana versus cocaine, methamphetamines, we've seen up and down in both of those categories.

Mr. KING. Okay. Well, let me just point this to marijuana itself. Are those numbers up or down on balance over the last 5 years?

Mr. FISHER. They are up, sir.

Mr. KING. Okay. And generally speaking, if you had to talk about the aggregate of drugs, are there more or less drugs coming across the border?

Mr. FISHER. I think if you compared previous 10 years versus the last 5 years, generally those numbers would be up as well.

Mr. KING. Still up. And the value of the drugs coming across the border, up or down?

Mr. FISHER. Um, probably up as well, yes.

Mr. KING. Okay. The value of the drugs are up. The transport of drugs across the border are up. What about the tragic deaths in the desert of those who attempt to come into the United States and don't make it through to beyond the desert, Arizona and Texas in particular. Are those numbers up or down?

Mr. FISHER. Recently, over the last couple of years, those numbers are down.

Mr. KING. They are down.

Mr. FISHER. Yes, sir.

Mr. KING. How many would you say are lost in the desert? What would that number be over the last year?

Mr. FISHER. I don't have the specific numbers with me, sir, but I'm happy to get that to you after the hearing.

Mr. KING. It seems to me that I have seen some numbers that showed us desert numbers in around 250 that now over the last year or so have grown to perhaps as high as 450. Does that comport with your understanding?

Mr. FISHER. That sounds about ballpark, sir. I'd have to take a look at the actual end of year report for '13 and make——

Mr. KING. To me, then, those numbers would be up. I ask these questions this way because if there is equal or more drugs coming across the border and if the value of those drugs—or the volume of those drugs essentially are equal or more, if there are fewer people that are losing their lives in the desert trying to come into the United States, then I would just ask this question. Are your apprehensions at the border up or down, say, over the last 5 years?

Mr. FISHER. Over the last 5 years, again, if you're looking at the comparative back in the '90's, they are down. If you'll look just over the last 2 years, fiscal year 2012 and 2013, and do the comparative, we're slightly up.

So, for instance, if you're comparing fiscal year 2012 apprehensions with fiscal year 2013 apprehensions, we were up approximately 16 percent end of last year.

Mr. KING. Okay. I am looking at numbers here that show 2004, 1,164,000 apprehensions at the border; '05, 1,189,000; and in '06, 1,089,000. '07, it went to 876,000. And then it began to go down, according to this Border Patrol record I have, from 723,000 in '08 to 556,000 in '09, 463,000 in '10, 340,000 in '11, and 364,000 in '12.

That would tell me that approximately one-third of the peak apprehensions between '04 and '05 are what actually the product of a large Border Patrol that we have now, roughly the same amount of drugs being interdicted, no reduction that I can see in the loss of lives in the desert.

So I am troubled by the overall picture of this, and I would just make this point. It seems as though there is a decision made by this Administration that they are going to target the resources. It is a decision to target the resources the most effectively as possible at those persons who pose the most risk to Americans. That is, I think, consistently the policy that we have heard from this Administration.

However, I am wondering what that picture would have been if we would have had a Rudy Giuliani broken window philosophy, and we had had people come from the Administration before this Committee and the Appropriations Committee and say this is what we need for resources to fully enforce the law, to fully control the border, to fully have enough beds to adjudicate, to send a message to everyone who is in this universe of 35,000 or 1-plus million that we are going to enforce the law.

It seems to me that would be the most effective thing that we can do, and it looks to me like we are having less interdictions at the border, and that might indicate less aggressiveness at the border if we are picking up as many drugs and if we are losing as many or more people in the desert.

That is my overall view on this. I appreciate your testimony, yield back the balance of my time.

Mr. GOODLATTE. The Chair thanks the gentleman and recognizes the gentlewoman from California, Ms. Lofgren, for 5 minutes.

Ms. LOFGREN. Thank you, Mr. Chairman.

I think it is important, in addition to being fact-driven on this, that we touch base also with the reason why we have an asylum system and why we have a refugee program. And that is because America is a beacon of hope for the rest of the world.

I actually—in addition to being Ranking Member on the Immigration Subcommittee, I am one of the bipartisan co-chairs of the Refugee Caucus here in the House of Representatives, co-chaired by our colleague Chris Smith from New Jersey, who is well recognized as a human rights activist. It is important that we have—that we continue to be that beacon of freedom and that we should not lose sight of that.

I think we ought to have some concern about this fact. If you come and escape torture, you make your claim of asylum, the first thing that happens to you is you get thrown in jail in the United States and you stay there usually for a very long time.

We have some examples here, and I will just mention one. A Tibetan man who was detained and tortured by the Chinese because of his advocacy for freedom in Tibet. Detained for about a year in our custody when he made his asylum plea.

A Baptist woman from Burma who was denied parole, even though she had proof of her identity, and was paroled only after 25 months in detention.

A man from Uganda who was arrested and tortured by police because of his sexual orientation, who was held in detention for 1 year before he was granted political asylum.

An Afghani man who came to the United States after being targeted by the Taliban as a U.S. loyalist because he provided translation services for our soldiers in Afghanistan. Despite establishing a credible fear of prosecution, he was detained for more than a year before he was granted asylum. So I think we have some soul searching to do on how we treat legitimate asylum seekers in this country.

I think we also need to have these facts in place. I mean, there have been assertions that the credible fear process somehow confers some kind of protective status on the undocumented, and that is not true. I mean, you are subject to criminal investigation and prosecution if that is warranted. That somehow Government officials and counterterrorism agencies don't have access to the asylum information. That is not correct. That individuals who are security threats or flight risks are eligible for release from detention. That is not so. That somehow extensive background and security checks aren't required for this credible fear determination. And finally, that there is some basis for asserting that these credible fear claims are fraudulent. We don't even know that because they haven't been adjudicated before the courts at this time.

In terms of, you know, no one believes it is proper for a person not to appear in court. I do not. None of the Members believe that. But I think it is important to take a look at the actual data, and if you take a look at the reports we have gotten from the Depart-

ment of Justice, the number of failure to appear is going down. The percentage is going down.

In 2008, the FTA rate was 10.3 percent, and in 2009, it was 6.5 percent. In fiscal year 2010 and 2012, it was 5 percent. So is 5 percent acceptable? No. But it is on the right trajectory on what is happening. I think that we ought to keep that in mind.

Finally, I do think that the—you know, there are lies, darned lies, and statistics. But we need to take a look at whether we are comparing apples to apples. And when you take a look, and maybe I could ask you, as Deputy Director of USCIS, the numbers, the 90 and 92 percent that we keep hearing about, it seems to me that that may not be accurate because we are not counting the withdrawn applications, and there are plenty—there are people—I have seen cases where people who are actually probably valid asylees are so distressed by prolonged detention that they give up and go back to where they are from.

So it looks to me that it is more on the nature of about 80 percent. Would you say that is correct?

Mr. GOODLATTE. The time of the gentlewoman has expired. Without objection, Ms. Scialabba will have 1 minute to respond to the question.

Ms. SCIALABBA. That is correct. Ninety-two percent are the number of credible fear interviews we do. However, there are a percentage of those people who will withdraw at some point, and I think the—I think the actual credible fear interviews that we do that go forward is about 84 percent.

We are tracking the withdrawals now. We are keeping those statistics separate.

Ms. LOFGREN. I would just note that I think—Mr. Chairman, I would like to ask unanimous consent to put into the record a letter from the Department of Justice to our colleague, Mr. Chaffetz, that has some of the statistics that I have referred to here.

Mr. GOODLATTE. Without objection, that will be made a part of the record.

[The information referred to follows:]

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 28, 2013

The Honorable Jason Chaffetz
Chairman
Subcommittee on National Security
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This responds to your letter to the Attorney General and then Secretary of the Department of Homeland Security (DHS) Janet Napolitano dated August 26, 2013, requesting information relating to the role of the Department of Justice (the Department) and DHS in the asylum process. We understand that DHS plans to reply to you separately.

We forwarded your request for information to the Department's Executive Office for Immigration Review (EOIR). As you likely know, EOIR administers the Nation's immigration court system. EOIR primarily decides whether foreign-born individuals, who DHS charges with immigration law violations and places in immigration proceedings, should be ordered removed from the United States or should be granted relief from removal, including asylum pursuant to 8 U.S.C. § 1158.

EOIR does not have any information or documents that are responsive to several requests in your letter (specifically, Questions 2, 3, 4, 7, 8, 11, and 12), and you may wish to contact DHS for responses to those questions. In general, EOIR would not have the information you seek in response to those questions, because the questions ask for information about matters that precede an alien being placed in immigration proceedings, or do not come under the authority of EOIR. As to Questions 1 and 5, EOIR does not track information about the total number of asylum court cases that involve material false assertions by witnesses, or the total number of successful prosecutions of attorneys committing fraud in the asylum application process.

In response to Question 13, as of September 9, 2013, EOIR had 253 immigration judges. We have enclosed charts that reflect information responsive to Questions 6, 9, and 10.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

Peter J. Kadzik
Principal Deputy Assistant Attorney General

Attachments

cc: The Honorable John F. Tierney
Ranking Member

Question 6: All documents describing the total number of asylum determinations conducted per year.

Answer 6: The FY 2012 Statistical Year Book, available at http://www.justice.gov/eoir/statspub/fy12syb.pdf, shows on page I2 the number of EOIR's asylum completions for FY 2008 to FY 2012.

	Completions
FY 2008	46,208
FY 2009	44,677
FY 2010	40,658
FY 2011	40,564
FY 2012	44,282

Question 9: All documents describing the percentage of asylum seekers who do not appear at their scheduled immigration court proceedings during the last five fiscal years.

Answer 9: The table below shows the percent of asylum completions that occurred when the asylum seeker did not appear. EOIR is unable to run a statistical report on failure to appear with respect to asylum cases that have not yet been completed.

FY	In Absentia Asylum Completions	Asylum Completions	Pct
FY 2008	4,768	46,208	10.3%
FY 2009	4,606	44,677	10.3%
FY 2010	2,629	40,658	6.5%
FY 2011	2,334	40,564	5.8%
FY 2012	2,192	44,282	5.0%

Question 10: A document describing the total number of denials of asylum requests by USCIS overturned by the Immigration Judges during the last five fiscal years.

Answer 10: The table below shows the number of credible fear cases that USCIS denies and EOIR receives, and the number in which an immigration judge then vacates the DHS decision. Upon an EOIR decision to vacate the DHS decision, the alien is placed into removal proceedings, where the alien may apply for asylum.

FY	Credible Fear Receipts	Vacate DHS Decision – Credible Fear
2008	702	84
2009	885	169
2010	1,160	203
2011	900	110
2012	755	81

The table below shows the number of asylum cases that USCIS did not approve and were, therefore, referred to an immigration judge, and the immigration judge then granted asylum. This information can also be found on page K2 of the FY 2012 Statistical Year Book (affirmative grants), available at http://www.justice.gov/eoir/statspub/fy12syb.pdf.

FY	Affirmative Asylum Cases Granted
2008	7,369
2009	7,268
2010	7,113
2011	8,195
2012	8,635

Mr. GOODLATTE. And I will also ask unanimous consent to make a part of the record information provided to the Committee that shows that since 1996, nearly 800,000 nondetained aliens in removal proceedings simply became fugitives and did not report for future hearings.*

The Chair now recognizes the gentleman from Arizona, Mr. Franks, for 5 minutes.

Mr. FRANKS. Well, thank you, Mr. Chairman.

Mr. Chairman, I was moved by some of the comments in your opening statement that pointed out that the United States has always been a very compassionate country that is committed to trying to be a place of refuge and relief for those that are fleeing genuine persecution, those that are genuinely in danger in their countries for a variety of reasons. And I think that is laudable and notable, and that is really the centerpiece of why we are all here today is that we are discussing this notion of making sure that America continues to be that last best hope, that bastion of freedom.

But I will suggest to you that if, indeed, we allow that process to be abused, if we do not scrutinize between those who are genuinely persecuted and genuinely trying to seek a way to escape deadly or lethal persecution from those who would use it as strictly a facade to gain entrance into this country, then those that we disserve the most are those that are genuinely persecuted. Because that process inevitably leads to people that are persecuted not being able to find any sort of refuge.

And I would really want to emphasize that because I am afraid, Mr. Chairman, that the process is being abused. And Mr. Fisher, I would just point to you. From your testimony, it appears that you do not have any conclusions why we are seeing now 36,000 credible fear applications in a single year, which is up from just 5,000 in 2008.

And perhaps it looks to me like the word has gotten out that credible fear claims might be a good way to get into the country, and not only is the abuse of credible fear process weakening our borders. It weakens the purpose of having these exceptions, and it increases the chances of those who are truly persecuted and not being able to escape. But it also appears that the Administration may be engaged in a sort of a wholesale effort to degrade our border security.

Shawn Moran, the vice president of the National Border Patrol Council, the Border Patrol union, states that the Border Patrol management has begun the practice of ordering Border Patrol agents to stand down and cease pursuing drug smugglers, human smugglers and traffickers, and illegal aliens. He has warned that this process could lead to illegal aliens with possible terrorist connections entering the country.

And so, I guess my first question, Mr. Fisher, is to you. Has any such stand-down policy or any effort made to try to diminish the practice of trying to diminish our law enforcement there at our bor-

*The information referred to is not reprinted in this hearing record but can be accessed at http://www.cis.org/Immigration-Courts.

der, has any stand-down policy like that been issued to Border Patrol agents?

And if not, what do you think the Border Patrol Council or the Border Patrol unions are really talking about here?

Mr. FISHER. Absolutely not, to your question, Congressman. And I don't know the motives and the context by which the union member would have made those statements.

Mr. FRANKS. So they are just—this is just a false claim that there is no such indication either on the basis of budget concerns or on the basis of some other motivation that these efforts should be diminished or not as intense as before?

Mr. FISHER. I have not written any directive nor have I signed any policy which would increase the risk to this country as it relates to our ability to continue to go after people that would do harm to this country once they've made an entry.

Mr. FRANKS. And you know of no one on any level that has participated in any way in that regard. Correct?

Mr. FISHER. I'm talking, sir, in terms of my direct command and control with the Border Patrol agents. That is not my policy, nor have I signed any directives——

Mr. FRANKS. Any oral comments to that effect to anyone? Any oral or verbal statements to the agency in general or the people that are kind of on the ground in general to that effect?

Mr. FISHER. Sir, not that I'm aware of.

Mr. FRANKS. Well, that is a good answer.

Well, I guess, Mr. Chairman, I would just revert then to my original point that, indeed, if you do not know why—and you have said earlier, the other gentleman, that you have these numbers, but you haven't told them to us—why we are seeing this enormous increase in credible danger claims. And if you do not know why that is the case, then I would just suggest to you that if our goal here is to serve the cause of human freedom, we have two bases.

We have to make sure that the flagship of human freedom is not weakened somehow by the process, and that being America. And secondly, we have to make sure that we know the difference between those who are truly, lethally persecuted and those who are not. And I would suggest to you that the numbers indicate that we are missing that mark pretty profoundly.

And with that, Mr. Chairman, I would yield back.

Mr. GOODLATTE. The Chair thanks the gentleman and recognizes the gentlewoman from Texas, Ms. Jackson Lee, for 5 minutes.

Ms. JACKSON LEE. Mr. Chairman, thank you for holding this hearing. I think whenever we can reinforce the truth, it is a very crucial hearing.

I thank the Ranking Member as well for his cooperation.

And I think the Chairman knows that as I start every hearing that addresses the ladies and gentlemen that are before us and we get into this area, I always offer that a scheme, a structure, such as comprehensive immigration reform truly will be part of the matrix that will help us move toward an effective structure that all of you can abide by.

Let me thank you for your service as well, even in light of our still struggling with the final results of comprehensive immigration reform.

Let me also say that this issue of asylum addresses the most vulnerable people in the world, people who are coming, fleeing persecution, some leaving family members behind, some escaping barely with their lives, and looking over their shoulder and seeing the bloodshed of those family members or friends or communities left behind. And I truly believe in the message of the Statue of Liberty, which ultimately had the welcoming of those who were coming to this country for opportunity. But it still stands as a very important symbol for those who are fleeing persecution.

And I might just to put in the record a list of moments when the United States needed to open its doors mostly, and in some instances, we did. In some, we did not. I start with the 1930's. World War II created a massive refugee crisis, and U.S. immigration policy restricts the acceptance of Jewish refugees fleeing Nazi persecution. I think we would have wanted to reconsider our interpretation of what we did in that instance.

In 1948, the United States increases immigration quotas, accepting large numbers of refugees and displaced persons from Europe. Some many, many years later after, of course, the horrific, horrific, catastrophic Holocaust.

Then, of course, the 1990's, the residual impact of civil war in Central America continues the Central American migration to the United States. We can document the violence during that time.

2005, Iraqis associated with the United States Government faced political persecution during the conflict in Iraq. The United States slowly began accepting Iraqi refugees in larger numbers.

And there were other times as well. And so, I would like this hearing not to move away from the idea of what asylum is all about, and as a member of the U.S. Congressional Human Rights Commission, I can tell you that we face these crises all the time.

So I quickly want to ask questions of just an overall question that when we look at the landscape of asylum seekers that may utilize credible fear, and we take the number 100 percent in terms of looking at the world, not only South and Central America, let me ask all of you, is there an epidemic of people using credible fear not legitimately?

So would you say 70 percent of the people coming use credible fear, and it is not true? Ms. Scialabba?

Ms. SCIALABBA. Thank you, Congresswoman.

Ms. JACKSON LEE. And I just need a yes or no answer. This is just a—would you say that the dominant number of people coming in use credible fear inappropriately?

Ms. SCIALABBA. I don't think that's the purpose of the credible fear interview. But, no, I wouldn't say that they're using it inappropriately.

Ms. JACKSON LEE. Mr. Ragsdale?

Mr. RAGSDALE. It's a little outside of my area of expertise, but I don't think the numbers would support that conclusion.

Ms. JACKSON LEE. Mr. Fisher?

Mr. FISHER. Congresswoman, it is out of my area of expertise, and I could not make a judgment at that point.

Ms. WASEM. Congresswoman, given that the—many of the uptick is still in the court system, I don't think we can answer that question with any definitive data.

Ms. JACKSON LEE. Well, I think that—let me just—well, you are in the GAO. The question is generically whether or not if you took 100 percent of those seeking asylum, and they raised—they raise it in the courtroom, they raise the credible fear. Is the credible fear being offered by that asylum seeker, is 100 percent of the people using it inappropriately? I think that is a——

Ms. WASEM. Well, obviously, there are—excuse me. There is a portion of the individuals who have already worked through the credible fear and then the defensive process who ultimately obtained asylum. We don't know exactly how many there are, but that data suggests that not all of them are abusing the system or the courts would not have granted them asylum.

Ms. JACKSON LEE. I think that is the basic point that we want to emphasize that we don't have an epidemic of abuse that can be documented. If you can't document the other way, you cannot document that there is an epidemic of abuse.

If I can just get an additional second for one question, Mr. Chairman? I would like to again go to the purpose of the credible fear process is not to identify meritorious asylum claims or to weed out claims that might not succeed before the immigration court. Isn't the credible fear process designed to weed out clearly non-meritorious, frivolous cases?

Isn't it to also, in light of the limited purpose that the credible fear process is meant to serve, when we jeopardize the lives of bona fide asylum seekers if we were to raise the standard, that's a very important point?

And if you would answer that, Ms. Scialabba?

Mr. GOODLATTE. The gentlewoman's time has expired, but without objection, the gentlewoman——

Ms. JACKSON LEE. Thank you.

Mr. GOODLATTE. - will be given 1 minute to answer the question.

Ms. JACKSON LEE. So raising the standard, would that be a problem? And then, isn't the credible fear process designed to weed out clearly non-meritorious, frivolous cases, and wouldn't it be a problem to raise the standards, hurting other people just to try and weed out what may be an undocumented fear?

Ms. SCIALABBA. I think the standard was carefully thought out when the legislation was passed. There is a lower standard that's manifestly unfounded that we do not use. We use the standard of significant possibility because we don't want to take the risk that somebody who has a legitimate claim to asylum or torture—we also look at the Convention against Torture as well as asylum—would be returned to their country and be persecuted or tortured.

Ms. JACKSON LEE. So you see no reason to raise the standard? That is what I am trying to—to make it harder?

Ms. SCIALABBA. No, I—I think that standard was carefully thought through when it was enacted.

Mr. GOODLATTE. The time of the gentlewoman has expired. The Chair recognizes the gentleman from Texas, Mr. Gohmert, for 5 minutes.

Mr. GOHMERT. Thank you, Mr. Chairman.

Ms. SCIALABBA AND MR. Ragsdale, do you, as Deputy Directors, take an oath before you assume your office?

Mr. RAGSDALE. I took an oath the day I became a Federal employee.

Mr. GOHMERT. But as Deputy Director, did you take an oath to become—to assume that role?

Mr. RAGSDALE. I didn't take another oath. In other words, I took the oath that I accepted when I joined Federal service.

Mr. GOHMERT. Yes. Ms. Scialabba?

Ms. SCIALABBA. I also took an oath when I joined Federal service. I've renewed that oath several times. I don't think it was necessary. But—because I've been in Federal service my entire career, but I've renewed it several times, yes.

Mr. GOHMERT. Okay, and that is an oath to follow the Constitution, correct, protect and defend? Correct?

Mr. RAGSDALE. Yes.

Mr. GOHMERT. And you understand under Article I, Section 8 that the Congress is given the power to make the law when it comes to issues regarding immigration, naturalization, those type of things. Correct?

Ms. SCIALABBA. That's correct.

Mr. RAGSDALE. Yes.

Mr. GOHMERT. Okay. Thank you.

Because I have before me, and I will read for you, it is from the Uniform—or from the United States Code, Volume 8, Section 1225, and this is under the Section B, entitled Asylum Interviews. And under subparagraph (ii), Referral of Certain Aliens, it says, "If the officer determines at the time of the interview that an alien has a credible fear of persecution within the meaning of clause (v), the alien shall be detained for further consideration of the application for asylum."

I don't see anything other than "shall" and "be" as the verb there, "shall be detained," the verbal clause there as to what actions can be taken. So since the Congress established that someone shall be detained, what law that Congress passed in accordance with Article I, Section 8 does—do your services rely on to avoid, and particularly you, Mr. Ragsdale, do you rely on to not follow the law that says "shall be detained"?

What law can you cite for me that avoids that "shall be detained" mandatory language?

Mr. RAGSDALE. So I am familiar with that section of the act. It's my understanding—and again, I certainly rely on my lawyers to tell me this. We do detain people during the credible fear process to find out whether or not our sister agency makes a finding that there is, in fact, a credible fear.

I think this also has to be put into some context here.

Mr. GOHMERT. Well, that is not my question about context. I am asking about the law because I am real concerned about it. We had people sitting right where you are who talked about this Administration making up its own laws, refusing to follow the Constitution, refusing to follow their oath in enforcing the law and faithfully executing the law. So I am trying to find out when you take action, what law are you following?

Could it be some memo, a memo from ICE Director John Morton that says, hey, you know, if they establish their identity, pose no flight risk or danger, have a credible fear, you know, go ahead and

release them? Is that what you rely on, Director Morton's memo to overcome United States law and the Constitution?

Mr. RAGSDALE. Well, as the ranking career person, right, I follow the agency, the Administration's policy. I will say there's another section of the Immigration and Nationality Act from 1952 that does, in fact, recognize parole in certain circumstances, and I would posit that as the section that's being followed here.

Mr. GOHMERT. I would posit for you——

Ms. LOFGREN. Would the——

Mr. GOHMERT [continuing]. As a Member of Congress, and I am not yielding—that when there is a conflict between the law and a policy of an agency, the policy of the agency has to give way to the law as passed by Congress. It is a very discouraging aspect of this Administration that we seem to be having this problem a lot.

And when the people who are charged with enforcing the law do not, they make up their own policies despite the law, then as one person said, then the general population gets the message they don't have to follow the law either.

I see my time has expired. Thank you.

Ms. LOFGREN. Mr. Chairman, I would like to ask unanimous consent that the gentleman be given an additional 20 seconds so he might yield it to me.

Mr. GOHMERT. My time is expired. I'm not asking any more time.

Mr. GOODLATTE. The Chair would recognize——

Ms. LOFGREN. I ask unanimous consent——

Mr. GOODLATTE. The Chair will recognize the gentleman from Georgia, and the gentlewoman can place her request to——

Ms. LOFGREN. I would like to ask unanimous consent to put the Section 212(d)(5)(A) and Section 214(f) of the Immigration and Nationality Act into the record, disproving all of the comments just made by my colleague from Texas.

Mr. GOODLATTE. The first part of that will be made a part of the record. Without objection——

Mr. GOHMERT. Yes, I would object to that being part of the record, that "disproving what her colleague just said," because it does not disprove what her colleague said. There is objection.

Mr. GOODLATTE. But the statutory provision will be made a part of the record.

[The information referred to follows:]

Section 212(d)(5)(A) *and (B)* of the Immigration and Nationality Act

(5)(A) The Attorney General may, except as provided in subparagraph (B) or in section 214(f), in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

(B) The Attorney General may not parole into the United States an alien who is a refugee unless the Attorney General determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee under section 207.

Section 214(f) of the Immigration and Nationality Act

(f) Denial of crewmember status in case of certain labor disputes.—

(1) Except as provided in paragraph (3), no alien shall be entitled to nonimmigrant status described in section 101(a)(15)(D) if the alien intends to land for the purpose of performing service on board a vessel of the United States (as defined in section 116 of title 46, United States Code) or on an aircraft of an air carrier (as defined in section 40102(a)(2) of title 49, United States Code) during a labor dispute where there is a strike or lockout in the bargaining unit of the employer in which the alien intends to perform such service.

(2) An alien described in paragraph (1)—

(A) may not be paroled into the United States pursuant to section 212(d)(5) unless the Attorney General determines that the parole of such alien is necessary to protect the national security of the United States; and

(B) shall be considered not to be a bona fide crewman for purposes of section 252(b).

(3) Paragraph (1) shall not apply to an alien if the air carrier or owner or operator of such vessel that employs the alien provides documentation that satisfies the Attorney General that the alien—

(A) has been an employee of such employer for a period of not less than 1 year preceding the date that a strike or lawful lockout commenced;

(B) has served as a qualified crewman for such employer at least once in each of 3 months during the 12-month period preceding such date; and

(C) shall continue to provide the same services that such alien provided as such a crewman.

Mr. JOHNSON. I believe it speaks for itself.

Mr. GOODLATTE. Without objection, that will be done. And now the gentleman from Georgia is recognized for 5 minutes.

Mr. JOHNSON. Thank you, Mr. Chairman.

I believe that our whole detention—immigration, detention setup is just a way for private industry to make money, and I will—I will deal with it like this. Are you, Mr. Ragsdale, familiar with the term the "detention bed mandate?"

Mr. RAGSDALE. I am familiar with that term, yes, as it relates to——

Mr. JOHNSON. And that's a term that came about in part due to the 2014 budget that was approved by this fiscally conservative, debt and deficit-reducing, Republican-controlled Congress, i.e., the Appropriations Committee that granted $147 million above what the Department of Homeland Security requested to maintain what amounts to an arbitrary quota of 34,000 detention beds that American taxpayers are going to pay for, regardless of whether or not they are filled.

Is that correct?

Mr. RAGSDALE. There is a section in the appropriations law that requires us to maintain 34,000 beds. That's correct.

Mr. JOHNSON. And it is something that you never requested? This was done for the purpose of detaining more immigrants. Isn't that correct?

Mr. RAGSDALE. Well——

Mr. JOHNSON. Yes or no?

Mr. RAGSDALE. More detentions happen when there is more funded beds. That's correct.

Mr. JOHNSON. And prisons are a task or a—prison—we need prisons to imprison people who need to be there, but our Government is—our Federal Government as well as many States have been on a trek to privatize the prison system. Isn't that correct?

Mr. RAGSDALE. There are commercial providers for detention services, yes.

Mr. JOHNSON. About 50 percent of all detainees are held in private detention centers. And now if we want to reduce the debt and the deficit, but at the same time, we are increasing spending for the detention of immigrants, that is inconsistent, don't you think, Mr. Fisher?

Isn't that inconsistent, those ideals inconsistent?

Mr. FISHER. Well, sir, with respect, again outside of my area, but——

Mr. JOHNSON. Well, no, no, no. Just I mean, that doesn't—that doesn't take any specific knowledge. That is just a matter of common sense.

I mean, seems to me if you want to cut the budget, you want to cut food stamps. But yet, last year alone, we appropriated nearly $18 billion to immigration enforcement agencies, Mr. Fisher. That is about 24 percent higher than the $14.4 billion total allocation for law enforcement agencies across the board, including FBI, DEA, U.S. Marshals, and ATF.

So, in other words, we have—I mean, we spend more money on homeland security, ICE, and detention and immigration enforce-

ment than we do for FBI, DEA, U.S. Marshals, and ATF combined. Did you know that?

Mr. FISHER. Stated that way, sir, no.

Mr. JOHNSON. Yes, well, I mean, that is the facts. Now while we are detaining, because we do detain these asylum seekers, do we not, Mr. Ragsdale? We detain them until they are granted parole, and we detain them for on average of 550 days. Isn't that correct?

Mr. RAGSDALE. Well, I'm not——

Mr. JOHNSON. Until they are granted parole?

Mr. RAGSDALE. I'm not sure precisely what number you're talking about there. As we've already heard this morning, aliens who arrive at or between ports of entry who——

Mr. JOHNSON. Well, let me get it to—let me get it like this. How many day—how many months in general do we detain asylum seekers before we are able to make an assessment as to whether or not they qualify for asylum?

Mr. RAGSDALE. So it varies on a case-by-case basis. CIS has done some very helpful work in expediting the credible fear process. That is now done in a number of days.

The Executive Office for Immigration Review is the responsible party for making ultimate decisions on defensive asylum claims, and that is a longer process.

Mr. JOHNSON. Mr. Chairman, it is clear to me that it is all about the money. I yield back.

Mr. GOWDY [presiding]. The gentleman from Georgia yields back.

The Chair would now recognize the gentleman from Texas, Judge Poe.

Mr. POE. Thank the Chairman.

I want to make it clear that I think that the concept of asylum is something that the country needs to do. Although I think it appears now that that is being abused by some specific individuals and by probably some groups. Otherwise, this chart wouldn't look like what it looks like.

The word has gotten out here is a way you can make a joke of the American law. And that just irritates me. So I want to talk about that group, not the legitimate folks who come to America for the reasons that we have America.

The reports that the drug cartels, when they get in a conflict south of the border, they tell their folks that are in the conflict, go to America, seek asylum, heat is off, you can come back. We will let you know when it is time to come back. Have you heard of that report? Any of you.

The Chief?

Mr. FISHER. Congressman, thank you for that question.

As a matter of fact, the intelligence report that I was referencing coming out of El Paso did have early collection that that, in fact, was happening.

Mr. POE. Thank you. And being from Texas, that—drug cartels are the enemy of the country. That is why we need more border security is because of them, the criminal threat to the United States. Not because of some of the other reasons maybe that people talk about. That is what concerns me as a Member of Congress and a former judge, border security, we have to go after these people, these bad guys, these criminals.

The hypothetical question, and so I am just looking for an answer here. Can a person claim asylum when the person is not just crossing the border, and you guys catch them, but somewhere else? Let us say they are in Oklahoma for some reason. I will use Oklahoma.

And they are stopped for speeding. A person, we don't know this because we don't do a background check sometimes on people from foreign countries because we don't get that information. We don't know anything about this person. We will never know anything about the person, but there is no criminal record that we have.

They have been in the country who knows how long. They are stopped by the Oklahoma Highway Patrol for speeding. They seek asylum the moment that they are stopped. Does the law say that is a bona fide asylum seeker, and they treat it through that route?

They are in Oklahoma. They are not anywhere close to the border. They aren't even close to the Texas border.

Ms. SCIALABBA. I'll answer that question. A person who is stopped like that who doesn't have proper documentation would be issued a notice to appear and appear before an immigration judge. They would not be part of the expedited removal process. They wouldn't receive a credible fear interview.

If they were here legally——

Mr. POE. No, they are not here legally.

Ms. SCIALABBA. Okay. If they're here illegally, then the way that it would be—the only way they could apply for asylum is if they're placed into removal proceedings before an immigration judge.

Mr. POE. I couldn't hear you.

Ms. SCIALABBA. If they're here illegally, the only way they could apply for asylum is if they're placed in removal proceedings before an immigration judge. They would make that application.

Mr. POE. But they have claimed credible fear as soon as they are stopped by the police.

Ms. SCIALABBA. At that point, they cannot. Credible fear does not apply in that situation.

Mr. POE. Okay. Is there a——

Ms. SCIALABBA. It only applies——

Mr. POE. Let me—may I ask the question? Does the law require that that be claimed a certain distance from the border? That is my question.

Ms. SCIALABBA. Expedited removal only applies 100 air miles from the border if the person hasn't been present for more than 14 days. And at the——

Mr. POE. Talking about an asylum seeker. They are talking about an asylum seeker. Does that—does the law say they have to be within 100 miles of the border or 25, or does it make a difference?

Ms. SCIALABBA. Oh, no. It does not, not in terms of who can apply for asylum, no, sir.

Mr. POE. That is the question. So the question, the answer to the question is you can be an asylum seeker when you are stopped in Oklahoma or Idaho or New York. You don't have to be anywhere close to the border, and we don't really know, since there is no criminal record, that the person, how long they have been in the country.

My question is very simple. Don't you think we ought to change the law that asylum seekers, when crossing the border, ought to be seeking asylum rather than, oh, by the way, I am an asylum seeker now that you caught me? You think that might be a good change to the law to prevent abuses?

Ms. SCIALABBA. Well, a person has to——

Mr. POE. Do you think that might be a good change of the law to prevent abuses or no?

Ms. SCIALABBA. No, I do not.

Mr. POE. Well, I think it should be.

And the last question I have is, are there any organized groups that you know of that are helpful or responsible for this spike in the numbers other than possibly the drug cartels who are gaming the law, as they have always done? That is my last question for the Chair.

Mr. FISHER. Congressman, I will take that. As we get more and more information about illicit networks, as they change their tactics, techniques, and procedures, they are, in fact, looking for areas of vulnerability, and in particular, as the report indicated, as it relates to credible fear, we have seen that as well.

Mr. POE. All right. I thank the Chair.

Mr. GOWDY. Thank you, Judge Poe.

The Chair would now recognize the gentleman from Utah, Mr. Chaffetz.

Mr. CHAFFETZ. Thank you.

And I would like to concur with Judge Poe's concern and belief that we do need an asylum process. We want people who come legally, lawfully. We have a rich heritage with this. But what is unconscionable, what we cannot stand for are people that abuse the system.

My understanding, Mr. Ragsdale, is that there are approximately 872,000 people, aliens, who remain in the United States despite final orders of removal. That would be an accurate number. Correct?

Mr. RAGSDALE. We have a different number. We have our fugitive backlog at about 460,000.

Mr. CHAFFETZ. So somewhere between—we will to after this hearing share documents. But it is by the hundreds of thousands of people that are supposed to be removed from this country. They have orders from the Government to deport, and they don't.

We can get into the whole lack of an entry/exit program. We have hundreds of thousands of people that are not—I think that is a crisis. I think that is a huge problem, especially when ICE is going to have less beds and less officers. Let us talk about this.

I am very curious, on page 6 of your joint testimony, it says asylum officers also ensure that the Federal Bureau of Investigation—well, let me go to this first. I guess it is to USCIS. How many asylum officers do we have in this Nation?

Ms. SCIALABBA. There are currently 270.

Mr. CHAFFETZ. So there is 270 people that are supposed to take care of this 35,000-plus number, right?

Ms. SCIALABBA. Yes.

Mr. CHAFFETZ. Has that number, the 272, has that increased over the last 5 years, or pretty much the same?

Ms. SCIALABBA. It has increased, and we're in the process of hiring 100 more asylum officers.

Mr. CHAFFETZ. How much time does that asylum officer take in interviewing somebody?

Ms. SCIALABBA. Are you referring to a credible fear interview or an asylum——

Mr. CHAFFETZ. Yes, yes.

Ms. SCIALABBA. For an credible fear interview, it's probably about 20 minutes is the interview. But prior to that, they would review all of the documentation that was accumulated and taken by the Border Patrol——

Mr. CHAFFETZ. Okay. So they get about 20 minutes on average.

Ms. SCIALABBA. On the actual interview.

Mr. CHAFFETZ. On the actual interview, right. And we heard in the Oversight Committee about how overworked a lot of these people are. But page 6 of the testimony, joint testimony, "Asylum officers also ensure that the Federal Bureau of Investigation name check and fingerprint checks have been initiated."

And I am curious about the word "initiated."

Ms. SCIALABBA. They're generally initiated by CBP or ICE. Oftentimes, those responses aren't back yet when we're doing the credible fear interview, but they would be back before there was any kind of determination made in terms of release or parole.

Mr. CHAFFETZ. So can you assure us that 100 percent of the people who are ultimately—who are released have been given an FBI—not just given or initiated, but they have completed the FBI background check and the fingerprint check?

Mr. RAGSDALE. So our policy requires that to happen. That's exactly right. And what I would also say is whether it's CBP, ICE, or CIS, at the various points, CBP would run all of those record checks at the time of apprehension. CIS would perform those same record checks at the time of the interview, and we would perform those same record checks for a third time before a release decision is made.

Mr. CHAFFETZ. So nobody is released prior to those being completed?

Mr. RAGSDALE. We know as much about them as we possibly can.

Mr. CHAFFETZ. Let me go back to parole. I am interested in the idea of parole. I am not an attorney, and my colleague Trey Gowdy says I am just bragging about that. But let me understand parole.

How many people do we have that track—how many people are on parole? You are tracking them, right? ICE tracks them?

Mr. RAGSDALE. Well, there are three agencies here, and all three agencies have parole authority. It comes up in different circumstances. From the ICE perspective, we could be talking about parole from custody, which is a different thing than parole at a port of entry.

Mr. CHAFFETZ. How many——

Mr. RAGSDALE. We could also be talking about parole on behalf of another law enforcement organization, which we do also at ICE.

Mr. CHAFFETZ. How many? What is that grand total?

Mr. RAGSDALE. I would have to get you that number.

Mr. CHAFFETZ. Do you have any idea of the estimate? I mean, you are supposed to be tracking them, right? So you supposedly

have their names. How many people are on parole within this system?

Mr. RAGSDALE. I don't want to speculate and give you the wrong number, but we will certainly get you that correct number.

Mr. CHAFFETZ. How long until I get that number?

Mr. RAGSDALE. We will do it with alacrity.

Mr. CHAFFETZ. Can you give me a date?

Mr. RAGSDALE. Sir, I will give it to you in a week.

Mr. CHAFFETZ. Thank you.

When they go on parole, what sort of checks or backgrounds, or do they have to check in? Explain that process to me of being on parole.

Mr. RAGSDALE. Well, it depends on the circumstance. So for someone who is in immigration proceedings and who is paroled from custody, they will have a hearing in front of an immigration judge, and the immigration court will determine their appearance schedule.

Mr. CHAFFETZ. So in my case of Phoenix, where they don't get a date for 7 years, they would be in a parole status. What, what sort of——

Mr. RAGSDALE. So I think we've heard several times today that immigration court hearing capacity is an issue.

Mr. CHAFFETZ. It is a problem.

Mr. RAGSDALE. It's something outside of my control, but I certainly would agree that it is something that bears examination.

Mr. CHAFFETZ. But I want to know how many people you have tracking them, what you do to track them?

Mr. RAGSDALE. We have about 5,000 officers in all—5,600 officers in all of ERO. So it is a small number considering the overall volume, whether it's your number or mine.

Mr. CHAFFETZ. Do you have anybody who is dedicated to following somebody on parole?

Mr. RAGSDALE. We have folks that manage the docket, and again, we cannot make a demand to remove somebody until an immigration judge decides their case.

Mr. CHAFFETZ. Do you have—sorry, Mr. Chairman, but I——

Mr. GOWDY. The gentleman from Utah is woefully over time.

Mr. CHAFFETZ. Do you have anybody that tracks these people?

Mr. RAGSDALE. Yes, we do.

Mr. CHAFFETZ. How many?

Mr. RAGSDALE. We will get you a fulsome answer on that question.

Mr. CHAFFETZ. On that same date, a week from now?

Mr. RAGSDALE. Yes.

Mr. CHAFFETZ. Thank you, Chairman.

Mr. GOWDY. I thank the gentleman from Utah.

The Chair would now recognize my friend from Illinois, Mr. Gutierrez?

Mr. GUTIERREZ. Thank you, Mr. Chairman.

I just want to talk a little bit about the asylum process, and first, I want to say that we are talking about credible fear and the President not enforcing the law and dangerous members of the drug cartels roaming our streets. I think it is important the Committee really, I believe, the last legislative day should be looking at a ho-

listic approach of this within the confines of deportations and legalization, legal immigration, and including our asylum system.

But I want to say that I think one of the things we need to focus on is the United States is still the international beacon of freedom for those facing oppression around the world. And people come here to take advantage of that, as well they should. That is what we want them to do. That is a very important job that we are doing.

And so, I want to thank everybody for doing that important job. Now we have to figure out who the people are that are trying to take advantage.

And I am sure there are people that take advantage of the food stamp program, but we are not going to let people go hungry. I am sure there are people who are taking advantage of unemployment compensation, but we are not going to tell somebody when they are unemployed we are not going to help them get back on their feet.

I am sure there are people that take advantage of it, but you know what, fundamentally, this is a necessary program that we need to improve upon. The fact that it could take somebody 7 years, lots of cases get decided well before 7 years. Depending on some jurisdictions, it is a year, 2, maybe 3 years at the out.

The 7-year is like the outlier. It is like, you know, the one case that sticks out there like a sore thumb. It doesn't usually——

Mr. CHAFFETZ. Will the gentleman yield?

Mr. GUTIERREZ. Sure.

Mr. CHAFFETZ. We are talking about the Phoenix office.

Mr. GUTIERREZ. I understand that. But——

Mr. CHAFFETZ. That is only three judges.

Mr. GUTIERREZ. What I am trying—and as you will soon see, Mr. Chaffetz, I am going to get to that point. So I just want to put in for the record that this is really outliers these 7 years, right? It is not happening that way in the City of Chicago. It is not happening that way in a lot of jurisdictions.

Now, in all of the jurisdictions it is taking too long. So I think Mr. Chaffetz's question is a much more important question that we need to answer. It is great that you have a little under 300 people looking at asylum, and you are going to hire 100 more. The fact is we need to double it. Shouldn't be taking 1, 2, 3 years after.

And I just want to say that as a member of the majority party in the sense that my President got elected, the guy I voted for got 5 million more votes than the guy you voted for. Nobody here, I can call them and somehow just some magic wand and I get somebody an asylum. I mean, there is a very rigorous process that has been taking care.

And I understand that the majority party wants to look at this, but I assure you, they do background checks. You got to go to the FBI. And even after that, I think what you are going to find that you are not going to find evidence that anything other—even after they have established that and have gone on background checks, they have got to prove that they are not a flight risk.

That means some people are a flight risk. Certainly that happens, but you have got to prove. I mean, I have worked on these cases. I have got to find a mom, a dad. I have got to find an uncle. I have got to find somebody, and we have to know who they are.

It is not like, oh, okay, we are doing a background check, but we really don't know. We didn't find you were a bad person. No, we have to not only find out that you are not a bad person, we have to actually know who you are.

And I would just think that maybe we might want to take, Mr. Chairman, some other measures so that we can reduce the number of people that don't show up to the cases. But let us remember, right, 75, 80 percent of the people do show up after they are released and do pursue the asylum claim. And they assume it, process it through the ultimate legal avenues that they have before them.

So, I mean, let us try to put this in the focus that 8 out of 10 actually apply. They go through the process. They are either successful, or they are not successful. And that it takes too long.

There are things we can agree on. It takes too long. So let us come back, and let us hire many more people so you don't have 7 years in the Phoenix office, and we don't have 2 or 3. It shouldn't be taking.

And there won't be time today, but I think if we really looked into this, Mr. Chairman, what we are going to find, we are going to find hundreds, thousands of people who stay in jail, year in and year out, because they cannot prove if they are released. Yes, I knew I was going to find a strategy to use. But people do stay in jail for years until their asylum process. So that is an unfair process.

So I think what we might want to look at is in the new year. And since the little yellow light is out, and the Chairman has always been so good to me, and we are in—we are going into a new year in 2014, I just want to say that, look, my hope is that next year, we can come back. We can look at this.

Maybe they need ankle bracelets, Mr. Chairman. Maybe we need other monitoring processes to help them. So when they are released, we can monitor the folks. Maybe there are other avenues. But let us make sure that if somebody really fears death that America is still a safe beacon for them to be here.

And I look forward. Merry Christmas to you guys, and great holidays. And I really look forward in 2014 to working with you, Mr. Chaffetz, and you, Mr. Chairman, and everybody on both sides of the aisle.

Thank you. I have established some great friendships with you all, and it has been a good year for me, and I want to say thank you.

Mr. GOWDY. Well, speaking just personally, I want to extend the same to you. And what a pleasure it has been to work with you for this past year.

And the Chair will now recognize himself for 5 minutes. Mr. Ragsdale, I am not going to spend my 5 minutes debating statutory construction with you. There is a statute that says "shall be detained." That just does not strike me as being an ambiguous statute.

To my friend from California's point, there is another statute, which is much more narrowly drawn. In fact, it is so narrowly drawn, it says "to meet a medical emergency or necessary for legiti-

mate law enforcement objective." I think you will agree that is much more narrowly drawn than "shall be detained."

So, since I know you agree with that, what percentage of those that are apprehended at the border are detained versus paroled?

Mr. RAGSDALE. Last year, we had about 220,000 book-ins from CBP.

Mr. GOWDY. What percentage would be detained versus paroled?

Mr. RAGSDALE. Of the 220,000 book-ins, it looks like about 25,000 were paroled, about 10 percent.

Mr. GOWDY. So, of that 25,000, you mean all of them can meet that very precise exception, medical emergency or necessary for legitimate law enforcement objective?

Mr. RAGSDALE. Well, and so, again, if you're talking about parole, in other words, 212(d)(5) parole, and I certainly don't want to debate statutory construction with the Chair, but urgent humanitarian needs and significant public benefit is a balance. The needs of the individual and versus the needs in terms of us balancing our resource requirements.

If we look at 460,000——

Mr. GOWDY. Does the "shall be detained" statute contain that same balancing?

Mr. RAGSDALE. Well, so there has been a fair amount of litigation about what "shall" means. We see it in the Ninth Circuit. We see it in the California. Believe me——

Mr. GOWDY. Yes, and no disrespect to my friends from California, but you are going to have to cite me something other than the Ninth Circuit. I don't doubt that the Ninth Circuit can't define "shall." I do not doubt that for a second.

The rest of the country does know what "shall" means. So, because I am not going to debate statutory construction with you, I want to ask you this. Of those who are paroled, I prefer the phrase "bond," but paroled, is there is a bond? Is it a surety bond? Is it a PR bond? What ensures that they will come back?

Mr. RAGSDALE. So immigration bonds are posted in a variety of ways. They're normally cash bonds. Again, if it's someone who has been apprehended between a port of entry, found to have a credible fear, is issued a notice to appear——

Mr. GOWDY. Who determines that credible fear?

Mr. RAGSDALE. The Citizenship and Immigration Services.

Mr. GOWDY. I have seen juries struggle for weeks and months to determine credibility. How long does it take them to ascertain whether or not someone is credible?

Mr. RAGSDALE. I would have to defer to my colleague at CIS.

Mr. GOWDY. Well, while you are deferring, I want to ask you about a memo that was produced to the Committee surreptitiously. This was a form that was being completed by an agent, and a supervisor wrote this at the bottom of the form, "We are not investigating potential fraud. We are adjudicating asylum claims."

Do you agree with me that that is an oxymoronic statement?

Mr. RAGSDALE. I'm not familiar with that document.

Mr. GOWDY. No, but you are familiar with the sentence because I just read it to you. "We are not investigating potential fraud. We are adjudicating asylum claims."

Ms. LOFGREN. Would the Chairman yield for a question?

Mr. RAGSDALE. I think inherent in the adjudication is detecting fraud.

Mr. GOWDY. Pardon me?

Mr. RAGSDALE. I would say inherent in the adjudication is detecting fraud.

Mr. GOWDY. So would I. So would I. So why would a supervisor——

Ms. LOFGREN. A parliamentary inquiry, Mr. Chairman. What document are you referring to, and does all the Members of the——

Mr. GOWDY. A document has been produced to me and another Member of the Committee in confidence.

Ms. LOFGREN. Would it be possible to share that document with other Members of the Committee?

Mr. GOWDY. I will be happy to ask the source of the document whether or not he has any objections to that. I do not. I am not going to endanger the confidentiality of this whistleblower, and I know that my friend from California would not ask me to do so.

What I do find it striking that a supervisor is saying that we are not in the business of investigating fraud. We are here to adjudicate asylum claims.

Mr. JOHNSON. Mr. Chairman?

Mr. GOWDY. That just strikes me as being an oxymoronic statement.

Mr. JOHNSON. Mr. Chairman, you are an attorney.

Mr. GOWDY. Correct.

Mr. JOHNSON. Proud attorney, I am sure, notwithstanding the comments that were made earlier by Mr. Chaffetz. But I know that you understand that rank hearsay, just hearsay on top of hearsay, copies of stuff, it is just not good, reliable evidence to——

Mr. GOWDY. Well, reclaiming my time, Mr. Johnson, I am happy to run through whatever exception to the hearsay analysis you want me to go through. But you and I both know that there are last time I counted 24 different exceptions to the hearsay rule. So——

Mr. JOHNSON. And this——

Mr. GOWDY.—I will be happy to debate with you some other time. You are welcome to ask for a second round of questions, but I am not going to spend my time debating hearsay exceptions with the gentleman from Georgia.

What I am going to ask, Mr. Ragsdale, is this. What is the punishment for falsely asserting that you have a credible fear? What is the sanction? What is the disincentive for asserting it when it is not true?

Mr. RAGSDALE. An immigration judge can make a frivolous asylum finding when they get to the ultimate asylum adjudication.

Mr. GOWDY. And the sanction is what? That you are not going to benefit from your false assertion? Is there anything else——

Mr. RAGSDALE. Or have immigration benefit, for that matter.

Mr. GOWDY. So if you weren't going to win if you told the truth and you are not going to win if you don't tell the truth, what is the punishment? What is the disincentive for that chart right there?

Mr. RAGSDALE. Well——

Mr. GOWDY. Because you and I both know the cartels are a lot more dangerous now than they were 5 years ago.

Mr. RAGSDALE. Let me make it clear that we spend 25 percent of our criminal investigative hours on narcotics cases. We take that very seriously. It is the biggest piece of our investigative portfolio. So we are, like I say, very much concerned about the drug cartels.

Mr. GOWDY. Well, tell me, walk me through that. Walk me through that credibility assessment then.

Somebody says that I have a credible fear of the cartel. You could run an FBI check. I don't think the FBI keeps crime stats in Mexico or Guatemala or Honduras. So how do you do it?

Mr. RAGSDALE. What I'm saying——

Mr. GOWDY. Well, walk me through it. You brought it up. Walk me through it, Mr. Ragsdale. Walk me through your investigation of credibility when you can't use U.S. law enforcement to do the investigation for you.

Mr. RAGSDALE. We do not do the adjudication for credible fears. Citizenship——

Mr. GOWDY. Are you familiar with the process that is used?

Mr. RAGSDALE. I'm not an asylum officer. I've never done it.

Mr. GOWDY. So you are not familiar with how they determine credibility?

Mr. RAGSDALE. I am familiar with the idea of credibility. As noted before, I am an attorney. I certainly know, as a prosecutor and a State prosecutor, you are well familiar with the concept. I certainly want, as a career law enforcement person, to want people to tell us the truth. I will tell you that we could prosecute folks for 1001, if that's what you're asking me.

Mr. GOWDY. Well, of course not. Because you and I both know that is not going to happen, and that is my point. There is no disincentive for claiming it, even if it is not true.

Mr. RAGSDALE. The Immigration and Nationality Act does provide for a sanction. It is a frivolous asylum finding. That is the statute.

Mr. GOWDY. Which means what? That you are not going to be successful? Well, you weren't going to be successful if you told the truth.

Mr. RAGSDALE. For that or any other immigration benefit for the rest of your life.

Mr. GOWDY. If you fail to show up on bond or what is called parole in the statute, is that any negative inference with respect to the subsequent hearing on the merits?

Mr. RAGSDALE. Immigration judges are the ones who are the fact finders and deciders of hearings after——

Mr. GOWDY. I am asking you. I am asking you, and if you don't know, that is fine. Is it something an immigration judge can take into consideration that a person failed to keep their appointed court date?

Mr. RAGSDALE. An immigration judge could take everything into consideration.

Mr. GOWDY. Do they take that into consideration?

Mr. RAGSDALE. Sir, I'm not an immigration judge. I couldn't—I would be speculating.

Mr. JOHNSON. Mr. Chairman, I have waited patiently, as the red——

Mr. GOWDY. Mr. Johnson, with all due respect, had you not interrupted me, the red light would not have come on. So I am going to handle it the way I want to handle it. And if you would like a second round of questions, I am happy to entertain that.

Mr. JOHNSON. Yes, I would.

Mr. GOWDY. Be delighted to. I would now recognize the gentlelady from California for a second round of questions.

Ms. LOFGREN. Thank you.

I would like to note just a couple of legal points. Section 208 of the Immigration and Nationality Act, 208(c)(6) provides in the case of frivolous applications that the alien "shall be permanently ineligible for any benefits" under the chapter, which I think is a disincentive for proceeding. And I would like also to mention in terms of statutory construction, it is important to read the entire sentence in the—in Section 235(b)(1)(B)(iii)(IV).

"Any alien subject to the procedures under this clause shall be detained," but only "pending a final determination of credible fear of persecution."

And so, it is not a permanent incarceration mandate. It is a mandate prior to the credible fear determination, and I have heard no indication that that is not being adhered to. So I think it is important to have those facts on the record.

You know, I want to get back to the reason why we have asylum in this country, and I would ask unanimous consent to place in the record information from the United States Holocaust Memorial Museum, chronicling the voyage of the St. Louis, one of the most shameful chapters in American history, where the German transatlantic liner, the St. Louis, traveled to Havana, where they were turned away. And then to Miami, where they were refused admission, and ultimately nearly all of the Jews who were on that liner perished in the Holocaust.

That is not to say that inquiry into the process is impermissible, but it is that legacy that leads us to make sure that we have an asylum system that actually works, that continues to be a beacon of freedom.

I think all of us are affected by matters on which we have worked, and I cannot help but recalling an asylum application that I weighed in on in the late 1990's. An individual who had been a pilot in the Afghanistan air force, and he had, I believe, a credible fear. And ultimately, he was denied asylum and returned to Afghanistan where he survived about 1 week before the Taliban executed him.

So there are real consequences for giving short shrift to the claims of asylum for individuals who show up on our shores seeking freedom.

Now looking at, if I may, Ms. Scialabba, the—we don't know the answer to what is going on in Honduras. The spike is primarily El Salvador, Guatemala, and Honduras. We know from our friends on the Foreign Affairs Committee, and Mr. Chairman, it might actually be a good idea to have some joint hearings with the Foreign Affairs Committee because this is their area of expertise on what is going on around the rest of the world.

But there is at least some evidence has come to me that there is tremendous upheaval going on in Honduras today. And I am wondering if you have any information, either from the initial decisions that are being made on some of these cases or from research that the agency has done, what upheaval or is there upheaval that is contributing to this spike from those countries?

Ms. SCIALABBA. Thank you, Congresswoman.

I can tell you what the claims are that we're seeing, and they generally do involve fear of cartels, sometimes fear of the government. Sometimes it's domestic abuse. Sometimes it's political opinion that the basis is. But a lot of it is based on criminal activity and people being targeted by cartels, by gangs, by corrupt officials, and we also see the domestic violence claims.

We also see some sexual orientation claims. I think those are the majority of—they fall into basically four categories for the most part of the claims that we're seeing.

Ms. LOFGREN. I see that my time has expired, Mr. Chairman. I yield back.

Mr. GOWDY. I thank the gentlelady from California.

Before I recognize the gentleman from Utah, I just want to read the—since we are now under the rule of completeness, reading the entire statute and all relevant provisions, "If the officer determines at the time of the interview that an alien has a credible fear of persecution, the alien shall be detained for further consideration of the application for asylum."

With that, I would recognize the gentleman from Utah, Mr. Chaffetz.

Mr. CHAFFETZ. Thank you, Mr. Chairman.

So, Mr. Ragsdale, when somebody is going in for that final adjudication process, they have claimed asylum, and the judge rules that they are not going to be granted asylum. Do you or do you not take them into custody and deport them?

Mr. RAGSDALE. Well, it depends on whether or not it's a final order of removal.

Mr. CHAFFETZ. If it's a final order of removal and they are there in the court, do you take that person, if they happen to show up, do you take them into detention and deport them?

Mr. RAGSDALE. So in the very rare circumstance that someone gets a final order of removal from an immigration judge, we would make every effort to take that person into custody at that time.

Mr. CHAFFETZ. Immediately, right there?

Mr. RAGSDALE. Assuming it was a final order, yes.

Mr. CHAFFETZ. And if they—if they have been denied asylum, how do you go out and find that person, and what percentage of these people are you able to actually detain and deport?

Mr. RAGSDALE. So if you say they've been denied asylum, and they are pursuing an appeal?

Mr. CHAFFETZ. Yes. Oh, no, no. They gone through all—they have exhausted their legal remedy. They have been ordered to be deported. Is it your primary responsibility to find and deport those people?

Mr. RAGSDALE. Yes, we have a national fugitive operations program, and that is their function.

Mr. CHAFFETZ. And we have hundreds of thousands of people on this list. Correct?

Mr. RAGSDALE. Correct.

Mr. CHAFFETZ. And this is the problem. If hundreds of thousands of people who would just ignore the law, they ignore the judge, they are supposed to be deported, they thumb their nose at us, and they just continue on here. That is the problem.

Let us talk about USCIS. When somebody gets an opportunity to have their case adjudicated, they are claiming asylum. They have been, okay, let us go to the next step. In my case in Phoenix, it is going to take 7 years before they go to a judge. They can apply for a work permit. Correct?

Ms. SCIALABBA. After 150 days, they can file an application. We have 30 days then to adjudicate it.

Mr. CHAFFETZ. And what percentage of people that apply for a work permit do you grant a work permit to?

Ms. SCIALABBA. In most cases, they get the work authorization if they're outside that timeframe.

Mr. CHAFFETZ. So, Mr. Chairman, they come here. They get detained. They see a judge. They get a court date, which, in the case of Phoenix, is some 7-plus years, and then they essentially get free education, free healthcare. They can apply for work permit.

You tell me the overwhelming majority are going to get a work permit, and then they can compete for—there is no limitation on what job they can get. Correct?

Ms. SCIALABBA. Let me clarify what I said because I made it a general statement, and it's a little bit more complicated than that. If you're talking about an affirmative asylum application, we have a timeframe, and we work with EOIR to do those within 180 days. Do they all get done in 180 days so the person doesn't get work authorization? No, not necessarily.

I was talking in terms of a defensive claim. If it goes directly to the immigration judge and the court hearing is going to be that far out, then, yes, it's likely they're going to get work authorization.

Mr. CHAFFETZ. Because there is such a backlog we just go ahead, and so you see the perverse incentive, Mr. Chairman. The perverse incentive is you can claim asylum in the country. We have embassies and consulates. You can walk into there and claim asylum. Correct? Correct?

Ms. SCIALABBA. Not exactly. No, that's not exactly how it works.

Most of our refugee applications come through UNHCR. You could go into an embassy and say that you want to have a refugee adjudication. It's highly unlikely. It's rare.

Mr. CHAFFETZ. But the perverse incentive here is come here illegally. Claim asylum. And then guess what? You are going to get free education, free healthcare, and you are going to apply and, most likely, odds are you are going to get a work permit.

Ms. SCIALABBA. Well——

Mr. CHAFFETZ. Instead of—instead of the person who tries to come here legally and lawfully isn't willing to break the law. There is a backlog. There is a line. I advocate for more legal immigration. I want to fix legal immigration. It is not working.

But that person is suddenly now working in the United States of America with this work permit.

Ms. SCIALABBA. I think I would also point out that quite a few people who apply for asylum actually did come into the country legally, not illegally. Probably half of the people who apply for asylum did enter——

Mr. CHAFFETZ. Do you have any statistic that backs that up?

Ms. SCIALABBA. I believe we do, and we can provide those to your staff.

Mr. CHAFFETZ. Let me also understand. You were trying to distinguish the difference between somebody who is at a port of entry and the points in between, that one was going to go through parole. The other was going to go through a different. Can you explain that again to me, the difference?

Mr. RAGSDALE. And I apologize for a less than clear answer. There are different sections of law that the Immigration and Nationality Act allows for consideration for custody. One is under one section of the law. Another is under a different section of law. So while the terms "parole" and "bond" are used sort of in a vernacular, there are actually some legal distinctions in those sections.

Mr. CHAFFETZ. We need some help understanding that because we're trying to look back at the law. I would ask unanimous consent to enter into the record the U.S. Immigration and Customs Enforcement memo issued on December 8, 2009, Parole of Arriving Aliens Found To Have a Credible Fear of Prosecution or Torture,* along with the record of determination, parole determination worksheet.

Mr. GOWDY. Without objection, with respect to that document and the document that Ms. Lofgren from California asked a UC on earlier.

[The information referred to follows:]

*This material was submitted for the record earlier by Mr. Goodlatte (R-VA) and can be found on page 10.

Voyage of the St. Louis

On May 13, 1939, the German transatlantic liner St. Louis sailed from Hamburg, Germany, for Havana, Cuba. On the voyage were 938 passengers, one of whom was not a refugee. Almost all were Jews fleeing from the Third Reich. Most were German citizens, some were from Eastern Europe, and a few were officially "stateless."

The majority of the Jewish passengers had applied for US visas, and had planned to stay in Cuba only until they could enter the United States. But by the time the St. Louis sailed, there were signs that political conditions in Cuba might keep the passengers from landing there. The US State Department in Washington, the US consulate in Havana, some Jewish organizations, and refugee agencies were all aware of the situation. The passengers themselves were not informed; most were compelled to return to Europe.

Since the Kristallnacht (literally the "Night of Crystal," more commonly known as the "Night of Broken Glass") pogrom of November 9-10, 1938, the German government had sought to accelerate the pace of forced Jewish emigration. The German Foreign Office and the Propaganda Ministry also hoped to exploit the unwillingness of other nations to admit large numbers of Jewish refugees to justify the Nazi regime's anti-Jewish goals and policies both domestically in Germany and in the world at large.

The owners of the St. Louis, the Hamburg-Amerika Line, knew even before the ship sailed that its passengers might have trouble disembarking in Cuba. The passengers, who held landing certificates and transit visas issued by the Cuban Director-General of Immigration, did not know that Cuban President Federico Laredo Bru had issued a decree just a week before the ship sailed that invalidated all recently issued landing certificates. Entry to Cuba required written authorization from the Cuban Secretaries of State and Labor and the posting of a $500 bond (The bond was waived for US tourists).

The voyage of the St. Louis attracted a great deal of media attention. Even before the ship sailed from Hamburg, right-wing Cuban newspapers deplored its impending arrival and demanded that the Cuban government cease admitting Jewish refugees. Indeed, the passengers became victims of bitter infighting within the Cuban government. The Director-General of the Cuban immigration office, Manuel Benitez Gonzalez, had come under a great deal of public scrutiny for the illegal sale of landing certificates. He routinely sold such documents for $150 or more and, according to US estimates, had amassed a personal fortune of $500,000 to $1,000,000. Though he was a protégé of Cuban army chief of staff (and future president) Fulgencio Batista, Benitez's self-enrichment through corruption had fueled sufficient resentment in the Cuban government to bring about his resignation.

More than money, corruption, and internal power struggles were at work in Cuba. Like the United States and the Americas in general, Cuba struggled with the Great Depression. Many Cubans resented the relatively large number of refugees (including 2,500 Jews), whom the

government had already admitted into the country, because they appeared to be competitors for scarce jobs.

Hostility toward immigrants fueled both antisemitism and xenophobia. Both agents of Nazi Germany and indigenous right-wing movements hyped the immigrant issue in their publications and demonstrations, claiming that incoming Jews were Communists. Two of the papers--Diario de la Marina, owned by the influential Rivero family, and Avance, owned by the Zayas family, had supported the Spanish fascist leader General Francisco Franco, who, after a three-year civil war, had just overthrown the Spanish Republic in the spring of 1939 with the help of Nazi Germany and Fascist Italy. Reports about the impending voyage fueled a large antisemitic demonstration in Havana on May 8, five days before the St. Louis sailed from Hamburg. The rally, the largest antisemitic demonstration in Cuban history, had been sponsored by Grau San Martin, a former Cuban president. Grau spokesman Primitivo Rodriguez urged Cubans to "fight the Jews until the last one is driven out." The demonstration drew 40,000 spectators. Thousands more listened on the radio.

When the St. Louis arrived in Havana harbor on May 27, the Cuban government admitted 28 passengers: 22 of them were Jewish and had valid US visas; the remaining six-four Spanish citizens and two Cuban nationals--had valid entry documents. One further passenger, after attempting to commit suicide, was evacuated to a hospital in Havana. The remaining 908 passengers (one passenger had died of natural causes en route)--including one non-refugee, a Hungarian Jewish businessman-had been awaiting entry visas and carried only Cuban transit visas issued by Gonzales. 743 had been waiting to receive US visas. The Cuban government refused to admit them or to allow them to disembark from the ship.

After Cuba denied entry to the passengers on the St. Louis, the press throughout Europe and the Americas, including the United States, brought the story to millions of readers throughout the world. Though US newspapers generally portrayed the plight of the passengers with great sympathy, only a few journalists and editors suggested that the refugees be admitted into the United States.

On May 28, the day after the St. Louis docked in Havana, Lawrence Berenson, an attorney representing the US-based Jewish Joint Distribution Committee (JDC), arrived in Cuba to negotiate on behalf of the St. Louis passengers. A former president of the Cuban-American Chamber of Commerce, Berenson had had extensive business experience in Cuba. He met with President Bru, but failed to persuade him to admit the passengers into Cuba. On June 2, Bru ordered the ship out of Cuban waters. Nevertheless, the negotiations continued, as the St. Louis sailed slowly toward Miami. Bru offered to admit the passengers if the JDC posted a $453,500 bond ($500 per passenger). Berenson made a counteroffer, but Bru rejected the proposal and broke off negotiations.

Sailing so close to Florida that they could see the lights of Miami, some passengers on the St. Louis cabled President Franklin D. Roosevelt asking for refuge. Roosevelt never responded. The State Department and the White House had decided not to take extraordinary measures to permit the refugees to enter the United States. A State Department telegram sent to a passenger stated that the passengers must "await their turns on the waiting list and qualify for and obtain immigration visas before they may be admissible into the United States." US diplomats in Havana intervened once more with the Cuban government to admit the passengers on a "humanitarian" basis, but without success.

Quotas established in the US Immigration and Nationality Act of 1924 strictly limited the number of immigrants who could be admitted to the United States each year. In 1939, the annual combined German-Austrian immigration quota was 27,370 and was quickly filled. In fact, there was a waiting list of at least several years. US officials could only have granted visas to the St. Louis passengers by denying them to the thousands of German Jews placed further up on the waiting list. Public opinion in the United States, although ostensibly sympathetic to the plight of refugees and critical of Hitler's policies, continued to favor immigration restrictions. The Great Depression had left millions of people in the United States unemployed and fearful of competition for the scarce few jobs available. It also fueled antisemitism, xenophobia, nativism, and isolationism. A Fortune Magazine poll at the time indicated that 83 percent of Americans opposed relaxing restrictions on immigration. President Roosevelt could have issued an executive order to admit the St. Louis refugees, but this general hostility to immigrants, the gains of isolationist Republicans in the Congressional elections of 1938, and Roosevelt's consideration of running for an unprecedented third term as president were among the political considerations that militated against taking this extraordinary step in an unpopular cause.

Roosevelt was not alone in his reluctance to challenge the mood of the nation on the immigration issue. Three months before the St. Louis sailed, Congressional leaders in both US houses allowed to die in committee a bill sponsored by Senator Robert Wagner (D-N.Y.) and Representative Edith Rogers (R-Mass.). This bill would have admitted 20,000 Jewish children from Germany above the existing quota.

Two smaller ships carrying Jewish refugees sailed to Cuba in May 1939. The French ship, the Flandre, carried 104 passengers; the Orduña, a British vessel, held 72 passengers. Like the St. Louis, these ships were not permitted to dock in Cuba. The Flandre turned back to its point of departure in France, while the Orduña proceeded to a series of Latin American ports. Its passengers finally disembarked in the US-controlled Canal Zone in Panama. The United States eventually admitted most of them.

Following the US government's refusal to permit the passengers to disembark, the St. Louis sailed back to Europe on June 6, 1939. The passengers did not return to Germany, however. Jewish organizations (particularly the Jewish Joint Distribution Committee) negotiated with four European governments to secure entry visas for the passengers: Great Britain took 288

passengers; the Netherlands admitted 181 passengers, Belgium took in 214 passengers; and 224 passengers found at least temporary refuge in France. Of the 288 passengers admitted by Great Britain, all survived World War II save one, who was killed during an air raid in 1940. Of the 620 passengers who returned to continent, 87 (14%) managed to emigrate before the German invasion of Western Europe in May 1940. 532 St. Louis passengers were trapped when Germany conquered Western Europe. Just over half, 278 survived the Holocaust. 254 died: 84 who had been in Belgium; 84 who had found refuge in Holland, and 86 who had been admitted to France.

United States Holocaust Memorial Museum. "Voyage of the St. Louis." Holocaust Encyclopedia. http://www.ushmm.org/wlc/en/article.php?ModuleId=10005267. Accessed on Dec. 12, 1013.

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

RECORD OF DETERMINATION/PAROLE DETERMINATION WORKSHEET

Alien's Claimed Name(s) (including AKAs) _____

_____ A#(s) _____

Detention Facility Name and Location _____

Field Office _____

This worksheet should be completed pursuant to section 212(d)(5) of the Immigration and Nationality Act (INA) and 8 C.F.R. § 212.5 for each arriving alien in U.S. Immigration and Customs Enforcement (ICE) custody following a determination by a U.S. Citizenship and Immigration Services asylum officer or an immigration judge of the Executive Office for Immigration Review that the alien has a "credible fear" of persecution or torture, within the meaning of INA § 235(b)(1)(B)(v) and 8 C.F.R. § 208.30(e)(2)-(3). Such an alien will have been initially processed under the INA's expedited removal provisions and should have a completed Form I-870 (Record of Determination/ Credible Fear Worksheet) in his or her A-file. For those aliens initially denied parole, a letter to that effect must be prepared for the signature by the Office of Detention and Removal Operations (DRO) Field Office Director or, where that authority has been delegated, to the Deputy Field Office Director or Assistant Field Office Director, in whose area of responsibility the alien is detained. The letter should provide a brief explanation of the reasons for denial of parole and notify the alien that he or she may request redetermination of parole based upon changed circumstances or additional evidence relevant to the alien's identity and whether and to what extent the alien poses a danger to the community or a flight risk.

The parole decision includes four determinations. First is an assessment of the alien's identity. Second is whether the alien is likely to appear at all scheduled hearings and enforcement appointments, including for removal upon issuance of a final order of removal. Third is whether the alien presents a security risk to the United States or a danger to the community. Fourth is whether there are any additional factors that may militate in favor of or against release, including, in particular, any exceptional, overriding reasons why an otherwise eligible alien should not be paroled. In completing this worksheet, DRO personnel should consult ICE Policy Directive Number 11002.1, entitled "Parole of Arriving Aliens Found to have a Credible Fear of Persecution or Torture" (effective on January 4, 2010).

This entire worksheet must be completed in every case. Use blank 8" x 11" paper if additional writing space is required. Include copies of all evidence that supports the decision to parole or not parole the alien with this worksheet.

Part I. Foreign Language

- Was a parole interview conducted in a language other than English? ☐ Yes ☐ No (If "No," proceed to Part II)
- In what language was the interview conducted: _____
- Was an interpreter used? ☐ Yes ☐ No
- Do the interviewing officer, alien, and interpreter (if applicable) understand one another? ☐ Yes ☐ No

Comments: _____

Part II. Determination

A. Identity

- Does the individual have valid, government-issued documentation of identity? ☐ Yes ☐ No
- In the absence of government-issued documentation of identity, are there any third-party affidavits from affiants, who are themselves able to establish their own identity and address, that support the validity of the individual's claimed identity? ☐ Yes ☐ No
- Has the individual otherwise established his or her identity through credible statements such that there are no substantial reasons to doubt the individual's identity as stated by the individual? ☐ Yes ☐ No
- Identify any statements or evidence that relate to the individual's identity and explain why the evidence does or does not satisfy the standard:

_____

B. Risk of Flight

- Does the individual have an address where he or she will reside (including, if applicable, residence provided by a community-based service provider)? ☐ Yes ☐ No
- Does the individual have any substantial ties to the community (e.g., relatives, organizations)? ☐ Yes ☐ No
- Are there any substantial reasons to believe the individual will not appear as required for all scheduled hearings and enforcement appointments? ☐ Yes ☐ No
- If substantial reasons exist to consider the individual a flight risk, is there an alternative to detention (ATD) program available? ☐ Yes ☐ No
- If ATD is unavailable, would imposition of a bond ensure the individual's appearance? ☐ Yes ☐ No
- Has the individual established that he or she does not pose a substantial risk of flight (taking into account such conditions or ATD options as may be applied)? ☐ Yes ☐ No
- Please explain your conclusion: _____

C. Danger to the Community

- Is there any substantial reason to believe that the individual poses an actual danger to the community or U.S. national security? ☐ Yes ☐ No
- Identify any evidence offered that relates to the individual's potential danger to the community or national security (including any mitigating evidence such as proof of rehabilitation) and explain why it does or does not justify continued detention: _____

D. Additional Factors (Including any Exceptional, Overriding Factors why Parole Should Not Be Granted)

- Are there any additional factors relevant to whether the alien should be released? ☐ Yes ☐ No
- Please explain: _____

Part III. Signatures and Approval

- Initial Preparer's Recommendation ☐ Grant Parole ☐ Deny Parole

(Name and Title of Preparing Officer)	(Signature of Preparing Officer)	(Date of Recommendation)

- Please explain your recommendation: _____

- Supervising Official's Assessment ☐ Grant Parole ☐ Deny Parole

(Name and Title of Supervising Official)	(Signature of Supervising Official)	(Date of Assessment)

- Please explain your assessment: _____

- Deciding Official's Conclusion ☐ Grant Parole ☐ Deny Parole

(Name and Title of Deciding Official)	(Signature of Deciding Official)	(Date of Decision)

- Please explain your conclusion: _____

Mr. CHAFFETZ. Thank you. My time has expired. So I yield back.

Mr. GOWDY. The Chair will now recognize the gentleman from Georgia, Mr. Johnson.

Mr. JOHNSON. Thank you.

My colleague from Utah makes some excellent points about the bottlenecks that are created which result in more people being held in detention centers because the system is backed up. We don't have enough immigration judges, and we don't have enough asylum officers. I believe he has made those points.

And those points are correct, is that right, Mr. Ragsdale?

Mr. RAGSDALE. I can't give specifics as those are two agencies by which I'm not employed. But I will say that for ICE and for the DHS enforcement arms generally, immigration court capacity is a concern.

Mr. JOHNSON. Well, let me ask Mr. Fisher, it does go to the benefit of the private prison industry is when we have the bottleneck caused by not having enough immigration judges and not having enough asylum officers. Does that sound reasonable to you?

Mr. FISHER. Yes, sir. But again, that's out of my area of expertise as a——

Mr. JOHNSON. I understand. I understand.

Mr. FISHER. Yes, sir.

Mr. JOHNSON. I understand. Well, Mr. Chairman, Americans are overwhelming in support of a path to citizenship. We all agree that strong enforcement has its place in a balanced approach to comprehensive immigration reform. But a path to citizenship is critical to reform.

This week, I proudly took part in the Fast for Families campaign. By fasting, I stood alongside my Democratic colleagues on this Committee who are following the examples of Martin Luther King, Jr., Mahatma Gandhi, and Nelson Mandela, as we address what has become a moral crisis in our society here in America.

You know, this is not about drug cartels. It is not about the rules of legislative construction or the rules of evidence, or even the rule of completeness. This is about a moral dilemma that we face in this country. Are we going to continue to sacrifice the liberty of immigrants, mostly from south of the border or from Africa, Hispanics and Black folks, being feasted upon by the private prison industry?

Are we going to continue to let that scenario line the pockets of the corporate bosses, or are we going to do something that is humane, justice—humane, just, and consistent with America's belief in due process? That is where we are right now.

Now we have talked about a bottleneck caused by background checks, and I will note that Edward Snowden's background check was done by a private contractor. The person who killed the folks over at the Navy Yard, background checks done by private industry.

Have we outsourced the background and security checks that we do for asylum seekers to the private sector, anyone on the panel?

Ms. SCIALABBA. I'll answer for USCIS. No, we do not.

Mr. RAGSDALE. And I'll answer for ICE. No, we do not.

Mr. JOHNSON. Do you have enough folks that are running those background and security checks employed at your agencies?

Ms. SCIALABBA. I'll answer for USCIS. It's the actual officer who's going to do the credible fear interview or the asylum application who runs—who checks and runs those background checks.

Mr. JOHNSON. Now, Mr. Fisher, your agency has the least to do with asylum applications out of the three agencies here. Do you—you don't do any background checks as Border Patrol. Correct?

Mr. FISHER. That is not correct, sir.

Mr. JOHNSON. You do?

Mr. FISHER. Yes, sir.

Mr. JOHNSON. Do you do them and pass it on to the asylum seekers—or the asylum officers?

Mr. FISHER. The records themselves?

Mr. JOHNSON. Yes.

Mr. FISHER. We complete post arrest, including biographic and biometric information. We run federated queries that reach out and touch multiple databases to identify the individual and to ascertain at some level the risk.

Mr. JOHNSON. But you do not make any determination about whether or not an asylum seeker has actually established a case of fear, of credible fear?

Mr. FISHER. That is true.

Mr. JOHNSON. All right. I will yield back the balance of my time.

Mr. GOWDY. I thank the gentleman from Georgia.

The Chair will now recognize the gentleman from Illinois, Mr. Gutierrez.

Mr. GUTIERREZ. Could you please pronounce your last name for me? Not that I am going to get it right, but I am going to try.

Ms. SCIALABBA. Scialabba.

Mr. GUTIERREZ. Scialabba, okay. So, Deputy Director Scialabba, let me ask you a few questions, and Mr. Ragsdale, you chime in if you think you can be helpful, anyone who thinks they can be helpful.

So how many people petition a year for asylum? How many people petition come——

Ms. SCIALABBA. Asylum and not credible fear?

Mr. GUTIERREZ. No. Well, make a credible fear application?

Ms. SCIALABBA. Last, during 2013, there were 36,000 people who applied, requested credible fear interviews.

Mr. GUTIERREZ. Okay. And then, of those who applied for credible fear interviews, how many were paroled?

Ms. SCIALABBA. That I will refer to my ICE colleague on.

Mr. RAGSDALE. It's approximately 25,000.

Mr. GUTIERREZ. About 25,000. So the remainder stay imprisonment until their cases are——

Mr. RAGSDALE. They were either detained or if a negative credibility—excuse me, a negative finding was found, they were removed.

Mr. GUTIERREZ. They were removed. Okay. So you have 36,000, 25,000 move forward in the process. I am just trying to figure out because I am talking to Mr. Chaffetz, and we are trying to figure out what is happening numerically.

Ms. SCIALABBA. We found credible fear in 30,000 cases. Some of those probably withdrew before they went before the immigration judge. Others will have gone before the immigration judge. In

terms of their custody, it will depend on whether they came in at a port of entry or whether they came in between the ports of entry.

At the port of entry, we can parole them. If they came in between the ports of entry, we could set a—I'm speaking for ICE, sorry. They could set a bond, or the immigration judge can set a bond, and then they can be released that way.

Mr. GUTIERREZ. But before—well, you know what, we are really going to need to have some, Mr. Chairman, some——

Ms. LOFGREN. Would——

Mr. GUTIERREZ. Yes?

Ms. LOFGREN. Would the gentleman yield for a question? Because, Mr. Ragsdale, I am mystified by your answer on the parole. Because we got the information from ICE dated December 5th, which was last week, that indicates that the total approvals were 2,467 for year 2013.

Mr. RAGSDALE. Approvals of?

Ms. LOFGREN. Parole.

Mr. RAGSDALE. So of the 25,000 roughly, about 12,000 were released on bond. About 8,000 released on their own recognizance, and about 4,390 were released on parole. So it sort of depends, and the only thing I could sort of——

Ms. LOFGREN. Well, why would the agency have given us the number of 2,467 if it was 4,000?

Mr. RAGSDALE. Well, I certainly apologize for the discrepancy. I'm not familiar precisely with what you're looking at, but we will certainly make sure that's clear to you.

Ms. LOFGREN. I thank the gentleman for yielding.

Mr. GUTIERREZ. Yes, and I think—Mr. Chairman, I think, I was talking to Mr. Chaffetz, and I think we are going to need some more information so that we can get some specific. Because I don't think, I could be wrong, that—so you treat Mexicans and other nationals differently? Anybody can answer.

Mr. RAGSDALE. No.

Mr. GUTIERREZ. No? There is not other than Mexicans and Mexicans as you are looking at them in terms of categorizing those that apply for asylum?

Mr. RAGSDALE. They make—if they make—apply for protection.

Mr. GUTIERREZ. Apply for protection there is no difference?

Mr. RAGSDALE. Not that I'm aware of.

Mr. GUTIERREZ. Really? Okay.

Mr. CHAFFETZ. Will the gentleman yield?

When I went to the Eloy detention facility, when I was down on the border, you have two categories of how you recognize them—OTMs, other than Mexicans, and Mexicans. It was pretty clear that somebody that was detained by the Border Patrol would, in many cases, be deported immediately, within, say, an hour or so in some cases back across the border. But if they were OTMs, a little different process they are going to go through.

Mr. GUTIERREZ. And I have heard the same thing, and we are not—with no hostility toward you, if you could help us?

Mr. RAGSDALE. Just Mexico is a unique country. They can be removed physically by ground transportation.

Mr. GUTIERREZ. I understand, but there is a difference. You do categorize them differently——

Mr. RAGSDALE. Their rights under the law are identical.

Mr. GUTIERREZ [continuing]. Those who are Mexican and Mexican nationals and others.

Mr. RAGSDALE. Their rights under the law to apply for protection are exactly the same.

Mr. GUTIERREZ. I understand their rights under the law are protected the same. Then why don't you just treat them all the same? Why do you categorize them differently?

First you are saying that you don't categorize them differently, but all my information is that you do categorize them differently. And the moment you categorize somebody differently, you are kind of undermining their rights. I mean, I would rather be in the general category than in a category of people that really get shipped back rather quickly and get denied.

I mean, if you were to take—let me just ask you a question. If you were to take Mexican national vis-a-vis nationals from India, Pakistan——

Mr. CHAFFETZ. Africa.

Mr. GUTIERREZ.—Africa, name the country, are you telling me that there is no difference in the percentage of denials between Mexicans and other nationalities?

Mr. RAGSDALE. When you're saying "denials," do you mean——

Mr. GUTIERREZ. People who aren't found with credible fear. People who never get asylum. People who are just said, adios, go back where you came from. The denial rate is no different?

Mr. RAGSDALE. The denial rate for Mexicans, I would suspect, is higher.

Mr. GUTIERREZ. Thank you. So I would like to know the number. So you see, my point is, first of all, we are talking about drug cartels, and the drug cartels the last time I read are from Mexico. And they only represent 7 percent, right, of all of those who are applying for credible—what is the percentage?

Ms. SCIALABBA. It's 7 percent.

Mr. GUTIERREZ. Seven percent. So now we are only talking about 7 percent of the totality of them. And we do know that they go through rigorous background checks. You are not going to release them until the FBI does a background check on them.

I think the Chairman makes a good point. Maybe we need to have some—so you have no relationship in checking on somebody with another country in terms of checking whether these people are criminals? You have no way?

Mr. RAGSDALE. These are domestic law enforcement data.

Mr. GUTIERREZ. These are domestic law enforcement. Well, maybe we should begin to look at that.

Mr. RAGSDALE. Well, so there certainly is some information that we share from our international affairs program. There are some biometrics that are shared with the governments of Honduras, El Salvador, and Guatemala. There is some information.

But the NCIC query, the TECS query——

Mr. GUTIERREZ. What you are saying is the Drug Enforcement Agency of the United States and the Justice Department of the United States and those of us in the Federal Government that are fighting drugs and crime——

Mr. RAGSDALE. Those records are checked.

Mr. GUTIERREZ. Excuse me?

Mr. RAGSDALE. Those records are checked.

Mr. GUTIERREZ. Those records are checked. Good. And we are not checking with our counterparts in other countries?

Mr. RAGSDALE. Not every country has the same systems.

Mr. GUTIERREZ. Not every country. How about Mexico? Let us try one country.

Mr. RAGSDALE. We share some information with Mexico.

Mr. GUTIERREZ. That is what I always understood up until—I mean——

Ms. LOFGREN. Would the gentleman yield?

Mr. GUTIERREZ. Yes.

Ms. LOFGREN. It mainly depends on the political relationship we have with the foreign country. I mean, we share terrorism information with Russia.

Mr. GUTIERREZ. Because——

Ms. LOFGREN. And quite a few other things.

Mr. GUTIERREZ. Thank you, Mr. Chairman. And we are going to conclude. Because here is what I find astonishing. We do—I mean, the success against a drug cartel, in great measure, is due to the intelligence services of the United States of America in identifying where they are at and locating them for the Mexican government. That is just a fact.

And when the new government, the new government was just brought in, they were quite astonished at the level of cooperation that exists between our intelligence services, our law enforcement services, including others, and I don't want to say anymore because, you know, then all of a sudden you are giving away state secrets. But I have read this stuff in Newsweek and Time.

Here is my point. I think, Mr. Chairman, we can make good points. It is taking too long, and we should try to figure out those that are taking advantage of the system. I don't believe personally that drug dealers and members of the drug cartel are showing up at our border and saying, voila, why don't you check me out?

I think they have other avenues to enter the United States through other mechanisms other than checking in with you, including a flight to Canada and coming through the border that is virtually unchecked on the northern part.

So, having said that, I think also, though, I want to just emphasize what Congresswoman Lofgren said. You know, people are coming here. We have got to design a system that doesn't cause their ultimate death because we are the beacon of hope. We are the place where people come to seek refuge.

So I think you are making good points. I think, together, we can put monitoring systems. We can do other checks and balances so that the majority. But let us just establish it is only 7 percent from Mexico. So I don't want headlines tomorrow, right, all of these drug cartels.

And it is really not about the drug cartels. Most of this has nothing to do with the drug cartel. And it is really people trying to get credible fear.

And I do want you to come back with information about Mexicans and other than Mexicans because I understand they are all the same, but they are treated differently statistically. And I would

like to know why a claim from a Salvadoran national, a Honduran national, or a Guatemalan national is treated differently than one of a Mexican national.

Because I am going to tell you something. From all of the information we receive here, whether through the Intelligence Committee or through other sources of information, it is virtually dangerous in many of those places equally. I wouldn't want to dial 911 and expect the police to show up.

Thank you very much, Mr. Chairman.

Mr. GOWDY. I thank the gentleman from Illinois.

The Chair would now recognize the gentlelady from California.

Ms. LOFGREN. Thank you, Mr. Chairman.

I would like unanimous consent to put in this document that explains the legal authority, both in terms of case law as well as statutory authority for parole, as well as you and I have—I think have a great working relationship, suggests that we might sit down at some point after this and go through the section of law. Because I think if we do, we will come to a meeting of the minds.

Mr. GOWDY. Yes, ma'am.

Mr. CHAFFETZ. What is—pardon me. But what is the source of this document that interprets the law for us?

Ms. LOFGREN. It is from the U.S. Immigration and Customs Enforcement. It is a recitation of the statutes as well as the cases.

Mr. CHAFFETZ. That would be great.

Mr. GOWDY. Without objection, I will look forward to working with the gentlelady from California, as I always do.

[The information referred to follows:]

U.S. Immigration and Customs Enforcement

PAROLE AND RELEASE FOR ALIENS CLAIMING CREDIBLE FEAR

(1) What is ICE's authority to parole?

The power to parole aliens into the United States has been recognized from the time the Immigration and Nationality Act (INA) was codified in 1952, and even for decades before. *See Matter of R-*, 3 I&N Dec. 45, 46 (Board of Immigration Appeals [BIA] 1947, "Parole is an administrative device of long standing. It has been used for more than 25 years in many types of cases."). Section 212(d)(5) of the INA now specifically authorizes the Secretary of Homeland Security to parole aliens into the United States on a case-by-case basis "for urgent humanitarian reasons or significant public benefit." The Secretary has, in turn, expressly delegated this authority to U.S. Immigration and Customs Enforcement (ICE). *See* DHS Delegation No. 7030.2, Delegation of Authority to the Assistant Secretary for U.S. Immigration and Customs Enforcement, dated November 13, 2004." Consistent with that delegation order and the underlying statutory and regulatory regime, ICE exercises its parole authority on a case-by-case basis when it is appropriate to do so as a matter of discretion.

(2) What is ICE's release authority for aliens who are not "arriving aliens" but claim credible fear?

As the BIA clarified in a 2005 decision, *Matter of X-K-*, 23 I&N Dec. 731 (BIA 2005), an alien who is encountered in the interior of the United States and processed under the expedited removal process is entitled to review of his or her detention after a credible fear is established and is placed in removal proceedings under section 240 of the Immigration and Nationality Act. If the Department of Homeland Security (DHS) does not release the alien or decides that the alien should be released subject to a bond or other conditions, the alien may (with limited exceptions) seek reconsideration of that decision before an Immigration Judge under 8 C.F.R. § 1003.19(h)(2)(i). The Immigration Judge will then assess whether the alien has demonstrated that he or she will appear for future hearings and that that his or her release will not pose a danger to the community.

This process may be contrasted with "arriving aliens" who demonstrate a credible fear and are in section 240 removal proceedings before an Immigration Judge, in that such aliens can only be released from custody under DHS's "parole" authority, an authority that Immigration Judges do not possess.

Mr. GOODLATTE. I will recognize myself for the final round of questions. And I was listening to my friend from Illinois talk just a few moments ago, and my friend from Utah, who, although they sit on different sides of the aisle, both strike me as incredibly compassionate people who don't want anyone who is being persecuted to not be able to avail themselves of the protections and the freedoms of this country.

No one has ever accused me of being compassionate. Nonetheless, I did introduce a bill that if you—that there will be no foreign aid to any country that discriminates on the basis of religion or who denies equal access to education based on gender. Now that bill has zero chance of passing, but I say that just to say I don't want anyone who is under a legitimate threat of being persecuted because of a belief to have to stay where they are.

But I also don't like fraud. And when I see that chart, what that chart requires me to accept is that the world is twice as dangerous in 2013 as it was in 2012. Because the numbers are more than double for 2013 than 2012, and that strains credibility.

If you are just watching C-SPAN at home, which means you have nothing better to do. But if you are watching this hearing at home, you just know intuitively that the world is not twice as dangerous as it was in 2012. So what explains the spike? What explains it?

Could any part of it be fraud? Could any part of it be that the message has gotten out that if you utter these talismanic words, regardless of the authenticity, that you are going to be better off?

I have heard about Honduras, and I have heard about Guatemala. The numbers are also up in India, Nepal, Bangladesh, China. So if the word has gotten out that you can game the system, which, by the way, also undercuts the legitimacy of legitimate claims. It is just not that it divert resources. It undercuts the legitimacy of people who are being persecuted.

So we ought to—if we can agree on nothing else, and there are days I don't think that we can. But we ought to be able to agree that we don't want people gaming the system, and we don't want fraud.

Mr. Ragsdale, are you familiar with the Dream 9 or the Dream 30?

Mr. RAGSDALE. I am familiar with them, yes.

Mr. GOWDY. Okay.

Mr. RAGSDALE. Not personally, but I have obviously——

Mr. GOWDY. Can you help me explain, if I am asked when I go back home, how would you voluntarily leave this country with its protections and its safeties, cross the border to make a political statement, and already have your paperwork drafted by a lawyer where you are asserting a credible fear? How is that successful?

How can you be credibly fearful of returning to a country that you just voluntarily returned to? How does that work?

Mr. RAGSDALE. Again, ICE does not make credible fear determinations. That is done by CIS. So we cannot look behind that decision.

Mr. GOWDY. Who should I ask?

Mr. RAGSDALE. What I can report to you is statistics.

Mr. GOWDY. I don't want statistics. I want—I want to know how I can explain how people who leave this country to make a political

statement and then want to hide behind this, how do I explain that?

Ms. SCIALABBA. There are situations where people will return to the country that they are originally from, and then they will experience some sort—the people that you're talking about initially were not asylum applicants. They had deferred action under the childhood arrival provision.

Mr. GOWDY. Oh, I know that. How long were they out of the country?

Ms. SCIALABBA. Not—well, it varies. Case by case, it varies.

Mr. GOWDY. What was the shortest amount of time they were gone?

Ms. SCIALABBA. Oh, honestly, I don't know off the top of my head.

Mr. GOWDY. Well, just give me a good guess. I am not going to hold you to it.

Ms. SCIALABBA. Maybe a week.

Mr. GOWDY. A week? So in the course of a week, you can develop a credible fear claim. And by the way, you actually developed it before you ever left because you had your attorney prepare the paperwork.

Ms. SCIALABBA. That I'm not aware of. But let me——

Mr. GOWDY. Well, I am just telling you. It undercuts the credibility of people who have legitimate claims when you demagogue it and you politicize it.

Ms. SCIALABBA. Well, I can give you two examples of cases that came, that did that, went back to Mexico, and I'm not advocating that they should have done that. But went back to Mexico and came back. And the claim was for one was based on sexual orientation. So that is a legitimate on which the claim of credible fear——

Mr. GOWDY. I am not debating the legitimacy of that. I am debating the logic of returning to a country that you are so fearful of that you want to permanently stay in another country. I am just telling you it strains logic, and it strains credibility, and it smacks of making a political point.

Is that chart accurate?

Ms. SCIALABBA. Yes, it's accurate.

Mr. GOWDY. All right. Is the world twice as dangerous in 2013 as it was in 2012?

Ms. SCIALABBA. I think you will see, if you look at the history of credible fear, that the nationalities will change on a regular basis and the fluctuations will change on a regular basis.

Mr. GOWDY. Well, I am looking at it. I am looking. I don't see any fluctuation that even approaches 2013 juxtaposed with 2012.

Ms. SCIALABBA. It does not. It does not.

Mr. GOWDY. Okay. So what do you explain the spike in 2013? Is there any chance it could be that we have figured out if you just utter this talismanic phrase, you are going to be better off?

Ms. SCIALABBA. Well, I will tell you we have been working closely with ICE and CBP because we are concerned with the large number of people who are claiming credible fear. But the stories that we're hearing and that they're telling us do rise to the low level that's required for credible fear referral. It's only a screening process.

Mr. GOWDY. Okay. And I want you to tell me, as an old washed up prosecutor, how you analyze credibility.

Ms. SCIALABBA. Our asylum officers are trained on credibility. You have to look at what the story that they're telling you, whether it's consistent, whether it's detailed, and whether it has a nexus to one of the five grounds for asylum. Persecution——

Mr. GOWDY. What kind of investigation do you do?

Ms. SCIALABBA. We do all the background checks.

Mr. GOWDY. Well, but it is tough to do a background check if you haven't been convicted of a crime. I mean, what are you going to check? A credit history?

Ms. SCIALABBA. No. We check the FBI fingerprints——

Mr. GOWDY. Okay. I haven't been convicted of a crime.

Ms. SCIALABBA. We do TECS checks as well, which is a database from CBP.

Mr. GOWDY. How long does this investigation last? How long does the interview last?

Ms. SCIALABBA. These are checks, not investigations.

Mr. GOWDY. Okay. How long does a check last?

Ms. SCIALABBA. We are not an investigative agency.

Mr. GOWDY. How long does a check last?

Ms. SCIALABBA. The checks are run through the databases. They're pretty quick.

Mr. GOWDY. I am just telling you. I don't know whether you were a prosecutor in a former life or not. I can just tell you this. It is really tough to assess credibility. Some people can't do it in weeks or months.

I hope—I would love to see a program that Luis Gutierrez and Jason Chaffetz and Zoe Lofgren and Louis Gohmert all agree is being done so well and that there is so much of an interest in ferreting out fraud that we don't have to have this hearing again. But I can just tell you, when you see a spike like the one from 2013 to 2012, it is impossible to explain to the people we work for anything other than someone has figured out how to game the system. Can you appreciate that?

Ms. SCIALABBA. I can appreciate that.

Mr. GOWDY. All right. Thank you.

On that note of conciliation, Mr. Chaffetz?

Mr. CHAFFETZ. I will be brief. Thank you, Mr. Chairman.

Going back to those people that are going through this assessment and checking, their performance evaluation—these asylum officers, their performance evaluation, is any part of their performance evaluation based on the number of approvals or disapprovals?

Ms. SCIALABBA. No, it is not. And all cases are reviewed by a supervisor.

Mr. CHAFFETZ. How many supervisors are there?

Ms. SCIALABBA. Seventy-five supervisors.

Mr. CHAFFETZ. Is any part of their performance evaluation based on how long they have to take on each case?

Ms. SCIALABBA. No. I mean, we—no, it's not. We have requirements on how quickly we want to move cases through the process, but someone's rating is not based on the number of cases that they are doing or not doing. We have goals. We definitely have goals.

Mr. CHAFFETZ. In your ideal world, how long should it take to move a case through the system, and what is the reality of how long it is actually taking?

Ms. SCIALABBA. Which system are you referring to?

Mr. CHAFFETZ. Well, the one you just referred to.

Ms. SCIALABBA. Expedited removal?

Mr. CHAFFETZ. Yes, sure. That one.

Ms. SCIALABBA. Expedited removal. On average, it's about 19 days before a case is referred to us for a credible fear interview. We're doing them within 8 days. We do the interview for credible fear and then refer the case back to ICE.

Mr. CHAFFETZ. And is there a goal that you said you are going to add 100 new officers or 100 new people to this. I am trying to get the metric that says this is how big the backlog is.

Ms. SCIALABBA. We don't have a backlog on credible fear. Where we're suffering is in the affirmative asylum process because we've devoted the resources to the credible fear process.

Mr. CHAFFETZ. So how, again, you are hiring 100 new people, and you have 270, did you say?

Ms. SCIALABBA. Two hundred seventy, yes.

Mr. CHAFFETZ. So what is the backlog or why—I think I understand why. But I want to hear from you, why are you hiring 100 new people where 270 was insufficient?

Ms. SCIALABBA. Because we were devoting people who would normally be doing affirmative asylum applications to the credible fear process because of the spike that you're seeing there of people applying for credible fear. And we need to add the asylum officers to stay current with the affirmative asylum process also.

Mr. CHAFFETZ. Do you meet with all of these people in person?

Ms. SCIALABBA. Which?

Mr. CHAFFETZ. When you are interviewing. You are trying to assess—going to Mr. Gowdy's point, when you are trying to assess somebody's credibility, do you meet with all of these people in person?

Ms. SCIALABBA. On the credible, you're referring to credible fear?

Mr. CHAFFETZ. Yes.

Ms. SCIALABBA. No, we don't meet. We do V-tel, we do in-person, and we also do telephonic.

Mr. CHAFFETZ. So you are assessing somebody's credibility on the telephone?

Ms. SCIALABBA. In some instances, yes.

Mr. CHAFFETZ. And how long is that interview going on?

Ms. SCIALABBA. Those interviews are about 20 minutes. It's a screening process. It's not a process to determine whether someone is actually going to get asylum. It's to determine whether there's a significant possibility that they could get asylum from an immigration judge.

Mr. CHAFFETZ. And this is the concern, Mr. Chairman and to the other Members of this panel, 20-minute telephone conversation we are assessing them, and in many cases, we are allowing them to stay here for 7 years. They get a work permit. They can get free education, free healthcare. I mean, all these benefits for simply touching base here.

I yield back. I appreciate this hearing. It has been a fruitful dialogue.

One last encouragement. We need metrics. Metrics that we can work on the same pages. This has been an ongoing problem with Homeland Security, to get metrics that we can all look at, not dispute. We just need your ongoing help. Just please help us with that so we get—we want to get it right, but we need the metrics to do so.

Appreciate the Chair, and appreciate this hearing and yield back.

Mr. GOWDY. The gentleman from Utah yields back.

I will give my friends on the other side the same amount of time. It seemed longer, but I think he only took 5 minutes. So I am going to divide it. However Mr. Johnson and Mr. Gutierrez want to use it, and I am done. So——

Mr. JOHNSON. All right. Thank you, Mr. Chairman.

The majority is arguing here that the credible standard of fear—the credible fear standard, which is set by statute, is too low. And they are also arguing that because of an alleged spike in the number of claims of credible fear, then there must be something that the Obama administration has to do with that. In other words, this is Obama's fault that we are having a spike in these credible fear asylum claims.

Now it is true that this fear found rate is higher than it has been since fiscal year 2006, when it was also 83 percent. It is 83 percent now. It is an 83 percent figure now. It was 83 percent in fiscal year 2006, was it not, Ms. Wasem?

Ms. WASEM. I believe that's correct.

Mr. JOHNSON. And matter of fact, fiscal year 2000, the credible fear rate was 93 percent of the cases. Is that correct?

Ms. WASEM. I do not have the 2000 data.

Mr. JOHNSON. Well, according to my data, it was a 93 percent rate. And in fiscal year 2001, the rate was 94.5 percent, and it only dropped below 90 percent after 2005, and that is attributable probably to two things. One, there was a policy change that stopped placing Cubans arriving at land ports of entry into expedited removal. And second, the 2004 REAL ID Act contained changes in asylum law that made asylum harder to obtain.

And as a result, this decreased the percentage of cases in which asylum officers were able to find a significant possibility that the alien could establish eligibility for asylum under Section 208. But, and I will say also that when one looks around the world, take India, for example, one of my colleagues from the other side cited. The rapes of women, does that contribute to these requests for asylum?

Syria, the displacement of so many people, hundreds of thousands of people. South Sudan, Somalia, Central African Republic, Democratic Republic of Congo, all of these fights that are going on, Egypt.

And at this point, I will yield the balance of my time to Mr. Gutierrez.

Mr. GUTIERREZ. Thank you, Mr. Chairman.

And I just want to make sure we work with Mr. Chaffetz because I believe he is correct that when you finally are granted asylum, you do have special provisions for education and for healthcare

once you are granted so that you can integrate. But I would like to see—I don't think you just show up at the border, get a credible fear and that somebody gives you Blue Cross Blue Shield and a Pell grant. That is just not happening.

But I do think at the end of the process that is happening, as well as it should as established by law. I would like to look at that. And I do think, Mr. Chairman, we have a responsibility. I love this program. I want this program, and I know you want—you have dedicated your public lives to this program. I want it to work.

And if you see something wrong in a program and you don't attack it, then you are really not safeguarding the program. You are really not demonstrating your true love for the program and its principles. And too many people's lives are at stake to let a few people who are, you know, as whatever, using the system for their own personal gain.

Thank you, Mr. Chairman.

Mr. GOWDY. Thank the gentleman from Illinois.

This concludes today's hearing. I want to say thank you to all the witnesses for attending, for your testimony, for your comity with each other and with the Committee.

Without objection, all Members will have 5 legislative days to submit additional questions for the witnesses or additional materials for the record.

With that, the hearing is adjourned.

[Whereupon, at 1:24 p.m., the Committee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

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MIDDLE EAST AND SOUTH ASIA
TERRORISM, NONPROLIFERATION, AND TRADE

SENIOR WHIP
DEMOCRATIC CAUCUS

CONGRESSWOMAN SHEILA JACKSON LEE OF TEXAS

ASYLUM ABUSE: IS IT OVERWHELMING OUR BORDERS?
STATEMENT
Thursday, December 12, 2013

- I would like to thank the Chairman and Ranking Member for holding this hearing on asylum—because when we speak of asylum seekers—we truly speak of some of the most vulnerable people in the world. The asylum seeker is someone fleeing persecution and let us be very clear here today—we hold their precious lives in our hands.

  I would also like to thank our witnesses:

  1. Michael J. Fisher, Chief of the U.S. Border Patrol (USBP)
  2. Daniel H. Ragsdale, Deputy Director, Immigration and Customs Enforcement (ICE)
  3. Lori Scialabba, Deputy Director, U.S. Citizenship and Immigration Services (USCIS)
  4. Ruth E. Wasem, Specialist in Immigration Policy, Congressional Research Service

- Aliens in expedited removal proceedings are subject to mandatory detention. This expansion of expedited removal proceedings in tandem with mandatory detention is a recipe for disaster—depriving those clinging to their very lives with no hope often of having a fair and just proceeding.

- But Mr. Chairman, let us not obfuscate the issue here. If we are really trying to stop dangerous actors from entering the United States via the asylum process—it is a little bit like building a twenty-thousand dollar door for your home which is uber-reinforced and made of the strongest metallic alloys but keeping the same windows which someone can just break and waltz right into your home.

- If a potential terrorist really wanted to harm the United States I do not think they would use the asylum route which is subject to tremendous scrutiny; or as one of my colleagues has suggested, the mythical anchor baby whose parents give birth in the United States and then go back to some dark, foreboding nation, wait 18 years, and then comes back to wreak havoc, notwithstanding all of the potential problems with this form of delayed, crock-pot terrorism.

- Why do that when they can go to Canada or Mexico and buy 19 fake documents in ten minutes?

- But I hasten my call for comprehensive immigration reform—the House should move on this now—we passed four bills out of this Committee last summer—and we have had a month-long recess—and still we await a bill.

- The American people want our brothers and sisters and neighbors out of the shadows so that they can pay taxes and live the American dream. The advocates want it. The business community wants it—let's do Comprehensive Immigration Reform.

- We had a very active, bi-partisan discussion about this issue during the Homeland Security Subcommittee Markup of H.R. 1417, the Border Security Results Act of 2013, earlier this year. I was pleased to support an amendment at the full committee markup to require DHS to develop an implementation plan for a biometric exit capability.
- I remain committed to working with my colleagues, on a bipartisan basis, on this very important issue, and would hope for a spill-over effect into the realm of comprehensive immigration reform.

- In order to qualify for protection as a refugee under U.S. immigration law, an individual must be persecuted based on one of five protected grounds—race, religion, nationality, political opinion, or membership in a particular social group. Individuals already in the U.S. may seek protection through the domestic asylum system, administered by the Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS) and the Department of Justice's Executive Office of Immigration Review (EOIR). If overseas, individuals may apply for refugee status through the U.S. refugee admissions program (USRAP), administered principally by the Department of State.

- Aliens stopped at the border and certain undocumented aliens apprehended near the border may be subject to expedited removal. Those who are subject to expedited removal, if they seek asylum, must go through a separate "credible fear" interview process before presenting an asylum claim before an immigration judge. Specifically, if the alien expresses a fear of persecution or torture during the expedited removal process, he or she is referred to a USCIS asylum officer for an interview to determine whether he or she has a "credible fear" of persecution.

- In recent years, we have significantly amended and tightened the country's asylum laws. The most notable changes occurred in 1996 with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), under a Democratic president. IIRIRA established a summary exclusion process known as "expedited removal," which allows the Department of Homeland Security (DHS) to remove certain foreign nationals without a hearing before an

immigration judge. Expedited removal is generally used to remove aliens who are apprehended when entering or attempting to enter the U.S. without appropriate documents.

- Also, since 2004 this procedure has been used to remove undocumented aliens who are apprehended within 14 days after entry and are encountered within 100 miles of the border. Persons subject to expedited removal are also generally subject to mandatory detention until they are removed. I would also add that deportations have been done at record levels under President Obama, another Democratic president.

- At the same time, as a Member from a border state, I am well aware of the importance of maintaining the flow of legitimate trade and travel as DHS implements this mandate, and the potential abuses of the asylum process. I am confident that with the right approach and appropriate support from Congress, DHS can do its job and prevent that. I look forward to a productive discussion today on this important issue.

- Let me add that I remain committed to advocating for common sense enforcement measures as part of a broader immigration reform package that will not only secure our borders, but also uphold our values as a Nation of immigrants.

- I thank the witnesses for being here today, call for comprehensive immigration reform, and I yield back the balance of my time.

Thank you. I yield back my time.

Refugees in the United States

The United States has experienced a temporary influx of refugees from particular areas of the world several times in its history due to civil strife and political repression abroad. The current increase in claims of a credible fear of persecution or torture may be a reflection of similar migratory pushes we have seen in the past.

1930s: World War II creates a massive refugee crisis and U.S. immigration policy restricts the acceptance of Jewish refugees fleeing Nazi persecution.

1940s: The United States slowly begins to accept refugees and displaced persons from Europe.

1948: In 1948, the United States increases immigration quotas, accepting large numbers of refugees and displaced persons from Europe.

1950s: The United States begins accepting refugees fleeing communism.

1956: The United States accepts refugees feeling the Soviet Union, including about 35,000 Hungarian refugees fleeing Hungary after a 1956 failed attempt at overthrowing the communist government.

1959: Fidel Castro becomes the leader of Cuba after a successful overthrow of the Batista regime resulting in the first of several waves of Cuban refugees fleeing for protection in the United States.

1970s: The Vietnam War creates a refugee crisis, as thousands of Southeast Asians with close ties to the United States seek protection from the communist government. Congress passes special legislation to permit the entry of thousands of Vietnamese refugees and establishes a special domestic resettlement program for these refugees.

1980s: Thousands of Guatemalans, Salvadorans, and Nicaraguans seek asylum in the United States fleeing political violence and civil war in Central America.

1980: Another wave of Cubans and thousands of Haitians claiming political persecution flee to the United States by boat.

1990s: The residual impact of civil war in Central America continues the Central American migration to the United States.

2000s: Conflicts in Africa including the Congo, Sudan, Ethiopia, and the Democratic Republic of the Congo create refugee crises. The United States will accept thousands refugees from this region throughout the decade.

2005: Iraqis associated with the United States government face political persecution during the conflict in Iraq. The United States begins accepting Iraqi refugees in larger numbers.

2007: The United States accepts tens of thousands of Bhutanese refugees from refugee camps in Nepal.

Material submitted by the Honorable Zoe Lofgren, a Representative in Congress from the State of California, and Member, Committee on the Judiciary

Credible Fear Nationality Report
All Cases: Summary
FY2008

Nationality	Receipts	Fear Found	Fear Not Found	Completions	Fear Found Rate
EL SALVADOR	857	358	293	870	41.15%
CHINA	602	520	68	598	86.96%
HONDURAS	586	320	135	582	54.98%
GUATEMALA	458	206	120	454	45.37%
MEXICO	312	141	66	311	45.34%
IRAQ	211	214	0	216	99.07%
HAITI	183	112	22	186	60.22%
ERITREA	169	165	2	168	98.21%
NICARAGUA	148	74	42	154	48.05%
BRAZIL	139	100	28	147	68.03%

Credible Fear Nationality Report
INL Cases: Summary
FY2013

Nationality	Receipts	Fear Found	Fear Not Found	Completions	Fear Found Rate
EL SALVADOR	6,779	5,669	662	6,699	\
HONDURAS	4,856	4,146	362	4,870	85.13%
GUATEMALA	4,062	2,956	382	4,071	72.61%
INDIA	1,935	1,849	34	1,895	97.57%
ECUADOR	1,477	1,302	62	1,470	88.57%
MEXICO	1,401	1,007	124	1,409	71.47%
CHINA	614	591	13	611	96.73%
NICARAGUA	300	276	8	303	91.09%
NEPAL	228	233	3	239	97.49%
PERU	186	163	10	180	90.56%

Credible Fear Nationality Report
POE Cases: Summary
FY2013

Nationality	Receipts	Fear Found	Fear Not Found	Completions	Fear Found Rate
INDIA	2,188	2,135	43	2,183	97.80%
MEXICO	2,170	1,672	199	2,160	77.41%
EL SALVADOR	979	783	105	979	79.98%
HONDURAS	587	491	34	584	84.08%
GUATEMALA	505	368	47	505	72.87%
SOMALIA	202	187	3	202	92.57%
HAITI	195	80	115	199	40.20%
CAMEROON	165	157	3	163	96.32%
ETHIOPIA	134	121	1	132	91.67%
CHINA, PEOPLE	129	119	4	129	92.25%

All Credible Fear Cases

Credible Fear Cases	FY-97	FY-98	FY-99	FY-00	FY-01	FY-02	FY-03	FY-04*	FY-05**
Referrals from ICE or CBP	1,438	3,427	6,690	10,315	13,140	10,042	6,447	7,917	9,465
Completed	1,206	3,304	6,463	9,971	13,689	9,961	6,357	7,754	9,581
CF Found	922	2,747	5,762	9,285	12,932	9,179	5,715	7,282	8,469
CF Not Found	256	125	144	150	119	84	45	32	144
Closed	28	432	557	536	638	698	597	440	968
% of all referred cases where CF Found	76.45%	83.14%	89.15%	93.12%	94.47%	92.15%	89.90%	93.91%	88.39%

Credible Fear Cases	FY-06	FY-07	FY-08	FY-09	FY-10	FY-11	FY-12	FY-13
Referrals from ICE or CBP	5,338	5,252	4,995	5,369	8,959	11,217	13,880	36,035
Completed	5,241	5,286	4,828	5,222	8,777	11,529	13,579	36,174
CF Found	3,320	3,182	3,097	3,411	6,293	9,423	10,838	30,393
CF Not Found	584	1,062	816	1,004	1,404	1,054	1,187	2,587
Closed	1,337	1,042	915	807	1,080	1,052	1,554	3,194
% of all referred cases where CF Found	63.35%	60.20%	64.15%	65.32%	71.70%	81.73%	79.81%	84.02%

* In August 2004, expedited removal was expanded beyond ports of entry to include those individuals apprehended within 100 air miles of the border and within 14 days of illegal entry. These cases are designated by USCIS as "inland" credible fear cases.

** In June 2005, CBP policy changed such that Cubans arriving at land border ports of entry were no longer placed into expedited removal but were instead placed into 240 removal proceedings, bringing their treatment in line with Cubans arriving at airports, by sea or in between ports of entry in certain locations.